

## EXHIBIT B

DOWNEY BRAND LLP  
MICHAEL J. THOMAS (Bar No. 172326)  
ANDREW L. COLLIER (Bar No. 191137)  
~~RYAN C. WOOD~~ SEAN FILIPPINI (Bar No.  
~~232267~~ 232380)  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814-4731  
Telephone: (916) 444-1000  
Facsimile: (916) 444-2100  
mthomas@downeybrand.com

~~rwood~~ sfilippini@downeybrand.com

Attorneys for Defendants/Counterclaimants  
FADEI USA, INC., PAN AMERICAN  
ENGINEERING and EQUIPMENT CO., INC.,  
MANUEL SILVA, and MARIANI PACKING CO.,  
INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VISTAN CORPORATION,

Plaintiff,

v.

FADEI USA, INC., PAN AMERICAN  
ENGINEERING and EQUIPMENT CO.,  
INC., MANUEL SILVA, and MARIANI  
PACKING CO., INC.

Defendants.

AND RELATED COUNTERCLAIMS.

Case No. C 10-4862 JCS

**DEFENDANTS' FIRST AMENDED  
INVALIDITY CONTENTIONS ~~AND~~  
~~ACCOMPANYING DOCUMENT~~  
~~PRODUCTION~~ [PATENT L.R. 3-3, 3-4,  
3-6]**

EXHIBIT B

Defendants Mariani Packing Co., Inc. (“Mariani”), Fadei USA, Inc. (“Fadei USA”), Pan American Engineering and Equipment Company Co., Inc. (“Pan American”), and Manuel Silva (“Silva”) (collectively, the “Defendants”) submit the following as their First Amended Invalidity Contentions for U.S. Patent Number 5,870,949 (“the ‘949 patent”) pursuant to Patent L.R. 3-3 ~~and identify and produce documents pursuant to Patent L.R. 3-3 and Patent L.R. 3-4.~~

**PRELIMINARY STATEMENT, RESERVATION OF RIGHTS,  
AND GENERAL OBJECTIONS**

1. ~~This disclosure is~~ These First Amended Invalidity Contentions are directed to invalidity issues only. Because the Local Patent Rules do not require any disclosures regarding unenforceability; or ~~infringement-or-claim-construction issues~~, this disclosure does not necessarily address those issues, and Defendants reserve all rights, including the right to address them at a later time.

2. These First Amended Invalidity Contentions are based on Defendants’ current knowledge, understanding, and belief as to the facts and information available as of the date of these contentions. Discovery in this action is ongoing, and Plaintiff has not completed its document production, and Defendants have not completed their investigation, discovery, or analysis of information related to this action.

~~3.— Plaintiff has violated the Local Patent Rules and has failed to produce all documents required under Local Patent Rule 3-2 in a timely manner, and has materially prejudiced Defendants right to a full and fair opportunity to prepare these contentions following, and in view of, Plaintiff’s document production. Accordingly, Defendants reserve all rights amend or modify these disclosures at a later time based on Plaintiff’s untimely production.~~

43. While Defendants have made a diligent and good-faith effort to provide a comprehensive list of prior art relevant to this case, Defendants reserve the right to seek leave of Court to amend, supplement, or materially modify its prior art list and these First Amended Invalidity Contentions as discovery progresses pursuant to Patent Local Rule 3-6 and consistent with section I.C. This reservation of rights includes the right to supplement prior art under 35 U.S.C. §§ 102(a), (b), (c), (d), (e), (f), and (g), and 103 ~~and 112~~ based on information Defendants

1 may learn during discovery in this case.

2 54. Defendants provide these First Amended Invalidity Contentions ~~prior to any~~based  
 3 on the recent claim construction ruling by the Court with respect to the claims of the '949 patent  
 4 asserted by Plaintiff in its proposed First Amended Infringement Contentions. ~~Any invalidity~~  
 5 ~~analysis may depend, ultimately, upon claim construction, which is a question of law reserved for~~  
 6 ~~the Court. Defendants reserve the right to seek leave to amend, supplement, or materially modify~~  
 7 ~~their prior art list and invalidity contentions after the claims have been construed by the Court.~~  
 8 ~~Defendants also reserve the right to seek leave to amend, supplement, or materially modify their~~  
 9 ~~prior art list and invalidity contentions based on any claim construction positions that Plaintiff~~  
 10 ~~may take in this case. Defendants also reserve the right to seek leave to assert new arguments that~~  
 11 ~~a claim is anticipated, obvious, indefinite, not enabled, or fails to meet the written description~~  
 12 ~~requirement based on any claim construction position Plaintiff may take or based on any claim~~  
 13 ~~construction the Court may adopt in this case., and pursuant to Patent Local Rule 3-6, reserving~~  
 14 all rights of appeal relative to that ruling.

15 ~~6.— To the extent that these Invalidity Contentions reflect constructions of claim terms~~  
 16 ~~that may be consistent with or implicit in Plaintiff's Infringement Contentions, no inference is~~  
 17 ~~intended or should be drawn that the Defendants agree with such claim constructions. Any~~  
 18 ~~statement herein describing or tending to describe any claim element is provided solely for the~~  
 19 ~~purpose of understanding the relevant prior art and the invalidity contention herein. The~~  
 20 ~~Defendants expressly reserve the right to propose any claim construction they consider~~  
 21 ~~appropriate and/or to contest any claim construction they consider inappropriate. In part because~~  
 22 ~~of the uncertainty of claim construction, the Defendants' Invalidity Contentions are sometimes~~  
 23 ~~made in the alternative and are not necessarily intended to be consistent with each other, and~~  
 24 ~~should be viewed accordingly. Further, by including in this disclosure prior art that would be~~  
 25 ~~anticipatory or render a claim obvious based on a particular scope or construction of the claims,~~  
 26 ~~including that apparently applied by Plaintiff in its Infringement Contentions, the Defendants'~~  
 27 ~~Invalidity Contentions herein are not, and should in no way be seen as adoptions or admissions as~~  
 28 ~~to the accuracy of such scope or construction.~~

# **I. INVALIDITY CONTENTIONS (PATENT L.R. 3-3)**

## **A. Patent L.R. 3-3(a): Identification of Prior Art**

Plaintiff accuses Defendants of infringing two (2) claims of ~~U.S. Patent Number 5,870,949~~ (the “949 patent”), in particular claims 5 and 12 (collectively, the “Asserted Claims”). See Plaintiff’s (Proposed)Amended Infringement Contentions. The Asserted Claims of the ‘949 patent are invalid in view of what few prior art references were before and considered by the patent examiner during prosecution, and in view of the additional prior art references disclosed herein, which can alone, or in combination, render the asserted claims of the ‘949 patent invalid.

Pursuant to Patent L.R. 3-3(a), in addition to the prior art identified in the ‘949 patent and prosecution history, at least the following prior art references are relevant to the validity of the ‘949 patent, and may alone, or in combination, render the asserted claims of the ‘949 patent invalid:

Great Britain Patent No. 1,072,178	Published June 14, 1967
U.S. Patent No. 5,870,949	February 16, 1999
U.S. Patent No. 4,213,382	July 22, 1980
U.S. Patent No. 3,282,314	November 1, 1966
U.S. Patent No. 4,122,765	October 31, 1978
U.S. Patent No. 5,577,439	November 26, 1996
U.S. Patent No. 3,061,070	October 30, 1962
U.S. Patent No. 4,306,649	December 21, 1981
U.S. Patent No. 1,071,333	August 26, 1913
U.S. Patent No. 1,802,973	April 28, 1931
U.S. Patent No. 2,938,620	May 31, 1960
U.S. Patent No. 3,088,582	May 7, 1963
U.S. Patent No. 3,199,558	August 10, 1965
Great Britain Patent No. 548,940	Accepted October 30, 1942
Australia/U.K. Patent No. 664,500	Published January 9, 1952

1	U.S. Patent No. 436,629	September 16, 1890
2	U.S. Patent No. 1,443,621	January 30, 1923
3	U.S. Patent No. 2,265,515	December 9, 1941
4	U.S. Patent No. 3,469,612	September 30, 1969
5	U.S. Patent No. 2,360,103	October 10, 1944
6	U.S. Patent No. 2,413,861	January 7, 1947
7	U.S. Patent No. 2,558,205	June 26, 1951
8	U.S. Patent No. 2,567,591	September 11, 1951
9	U.S. Patent No. 2,688,352	September 7, 1954
10	U.S. Patent No. 2,740,440	April 3, 1956
11	U.S. Patent No. 2,827,088	March 18, 1958
12	U.S. Patent No. 3,291,172	December 13, 1966
13	U.S. Patent No. 3,305,071	February 21, 1967
14	U.S. Patent No. 3,318,349	May 9, 1967
15	U.S. Patent No. 4,308,292	December 29, 1981
16	U.S. Patent No. 3,561,583	February 9, 1971
17	U.S. Patent No. 3,915,082	October 28, 1975
18	U.S. Patent No. 3,965,809	June 29, 1976
19	U.S. Patent No. 4,009,650	March 1, 1977
20	U.S. Patent No. 4,096,795	June 27, 1978
21	U.S. Patent No. 4,103,607	August 1, 1978
22	U.S. Patent No. 4,216,712	August 12, 1980
23	U.S. Patent No. 4,871,568	October 3, 1989
24	U.S. Patent No. 5,577,439	November 26, 1996
25	U.S. Patent No. 3,556,281	January 19, 1971
26	U.S. Patent No. 3,618,648	November 9, 1971
27	U.S. Patent No. 3,738,257	June 12, 1973
28		

U.S. Patent No. 3,910,416                      October 7, 1975

U.S. Patent No. 4,485,732                      December 4, 1984

U.S. Patent No. 5,024,147                      June 18, 1991

U.S. Patent No. 5,619,912                      April 15, 1997

U.S. Patent No. 3,180,477                      April 27, 1965

Document entitled: Herbort “High Capacity Pitting Machine for Cherries 27A, for Plums 27F”

2 Page brochure by Elliott Manufacturing Co. discloses a prune pitting apparatus

Letter dated October 21, 1997 (and quotation attached thereto) by Elliott Manufacturing Company, inc. refers to and describes a prune pitting apparatus

Herbort Cherry and Plum Pitter Model 27A Operating Instructions and Spare Part List

**B. Patent L.R. 3-3(b): Anticipation and/or Obviousness**

Pursuant to Patent L.R. 3-3(b), Defendants identify the items of prior art that anticipate the asserted claim(s) or render it obvious.

Claims 5 and 12 are anticipated under 35 U.S.C. § 102 in view of British Patent No. 1,072,178, published in 1967 (30 years prior) to Sunsweet Growers (the “Sunsweet Patent”). The Sunsweet Patent discloses a support structure or frame upon which the features of the apparatus are mounted; grippers or means for holding the fruit during pitting operations; a pitting plunger or knife used for pitting; and cam operated grippers which vary the gripping force during and after pitting and a drive assembly used to translate the held fruit. As for the intermittent element of the Asserted Claims of the ‘949 patent, intermittent pitting machines were well known in the art (*see infra*), and “a skilled artisan could take [Sunsweet’s] teachings in combination with his own knowledge and be in possession of the device of applicant’s claim.” *In re Graves*, 69 F.3d 1147, 36 U.S.P.Q.2d (BNA) 1697 (Fed. Cir. 1995)(finding inherent anticipation under section 102); *Fenton Golf Trust v. Cobra Golf, Inc.*, 48 U.S.P.Q.2d (BNA) 1198 (N.D. Ill. 1998)(finding inherent anticipation under section 102). Thus, a person having ordinary skill in the art would certainly have understood that a pitting apparatus could be adapted to be operated intermittently,

1 rather than continuously. Accordingly, the '949 patent is anticipated under section 102 by British  
 2 Patent No. 1,072,178. This single prior art reference also renders the '949 patent obvious under  
 3 35 U.S.C. § 103.

4 With respect to obviousness in view of combinations of prior art under 35 U.S.C. § 103,  
 5 the U.S. Supreme Court's decision in *KSR International Co. v. Teleflex Inc., et al.*, 550 U.S. 398,  
 6 415-16 (2007) ("KSR") held that a claimed invention can be obvious even if (assuming for the  
 7 sake of argument and not by way of admission) there is no teaching, suggestion, or motivation for  
 8 combining the prior art to produce that invention. In summary, *KSR* holds that patents that are  
 9 based on new combinations of elements or components already known in a technical field may be  
 10 found to be obvious. *See generally KSR*, 550 U.S. 398. Specifically, the Court in *KSR* rejected a  
 11 rigid application of the "teaching, suggestion, or motivation [to combine]" test. *Id.* at 418. "In  
 12 determining whether the subject matter of a patent claim is obvious, neither the particular  
 13 motivation nor the avowed purpose of the patentee controls. What matters is the objective reach  
 14 of the claim." *Id.* at 419. "Under the correct analysis, any need or problem known in the field of  
 15 endeavor at the time of invention and addressed by the patent can provide a reason for combining  
 16 the elements in the manner claimed." *Id.* at 420. In particular, in *KSR*, the Supreme Court  
 17 emphasized the principle that "[t]he combination of familiar elements according to known  
 18 methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416.  
 19 A key inquiry is whether the "improvement is more than the predictable use of prior art elements  
 20 according to their established functions." *Id.* at 417.

21 *KSR*'s effect on mechanical patents, such as the mechanical patent at issue here, has been  
 22 significant. *See Wyers v. Master Lock Co.*, 616 F.3d 1231 (Fed. Cir. 2010), cert. denied, (Federal  
 23 Circuit found that even in the absence of expert testimony, judges can make a common sense  
 24 determination in mechanical cases to combine the prior art to find patent claims obvious and thus  
 25 invalid); *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1158 (Fed. Cir. 2007)  
 26 ("accommodating a prior art mechanical device to modern electronics would have been reasonably  
 27 obvious to one of ordinary skill in children's learning devices."); *In re Icon Health and Fitness, Inc.*,



496 F.3d 1374, 1377 (Fed. Cir. 2007) (mechanical case with Federal Circuit upholding Board of Patent Appeals' obviousness finding that a treadmill advertisement and U.S. Patent No. 4,370,766 by Teague ("the '766 patent"), which disclosed a folding bed using a gas spring, rendered the patent obvious); *Agrizap, Inc. v. Woodstream Corp.*, 530 F.3d 1337, 1344 (Fed. Cir. 2008) (reversing jury determination of non-obviousness in relation to a mechanical rat trap device).

More recently, in 2011, the Federal Circuit further expanded upon KSR's application to relatively simple mechanical devices, such as the apparatus at issue here. In *Tokai Corp. v. Easton Enterprises, Inc.*, 632 F.3d 1358 (Fed. Cir. 2011), the Federal Circuit affirmed summary judgment of obviousness entered by the District Court in relation a mechanical patent. In arriving at its conclusion that Tokai's asserted claims were obvious, the appellate panel looked at the fact that the components of the claim are "simple mechanical parts that are well known in the art;" that "a need for safety utility lighters was recognized in the art;" that similar safety switches were already available for cigarette lighters (an admitted analogous art); and that the art is "predictable." As in *KSR*, the appellate court here held that the "identified, predictable solution" to the "known problems" were within the grasp of a skilled artisan.

Moreover, in view of the Supreme Court's *KSR* decision, the PTO issued a set of new Examination Guidelines. See Examination Guidelines for Determining Obviousness Under 35 U.S.C. §103 in view of the Supreme Court Decision in *KSR International Co. v. Teleflex, Inc.*, 72 Fed. Reg. 57526 (October 10, 2007). These Guidelines summarized the *KSR* decision, and identified various rationales for finding a claim obvious, including those based on other precedents. Those rationales include:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for

improvement to yield predictable results;

(E) “Obvious to try” – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

*Id.* at 57529.

The Defendants contend that one or more of these rationales apply in considering the obviousness of the claims of the ‘949 patent. A person of ordinary skill at the time of the invention had reason to combine or modify one or more of the references listed and charted in **Exhibit A** in light of the knowledge of a person of ordinary skill in the art at the time of the invention and information in the prior art cited herein. A patent claim may be obvious if the combination of elements was obvious to try or there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent’s claims. In addition, when a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, Section 103 bars its patentability.

Because the ‘949 Patent simply arranges old elements with each performing the same function it had been known to perform and yields no more than what one would expect from such an arrangement, the combination of these old elements is obvious. (*KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742 (2007)). Further, in the prior art, there were well recognized design needs and market pressures to develop pitting machines that more efficiently separate fruit from pits. (See, e.g., British Patent No. 1,072,178, published in 1967 (30 years prior), the *Sunsweet Patent*). Such design needs and market pressures provide ample reason to combine prior art

1 elements in the manner recited in the claims. (KSR, 127 S. Ct. at 1742). Moreover, since there  
2 were a finite number of predictable solutions, a person of ordinary skill in the art had good reason  
3 to pursue the known options. *Id.* Indeed, a person skilled in the art would have been familiar  
4 with all the claim elements that the patentee used to distinguish some of the prior art during  
5 prosecution. (Note that most of the most of the prior art was not before or considered by the  
6 Examiner). The above identified prior art references merely use those familiar elements for their  
7 primary or well known purposes in a manner well within the ordinary level of skill in the art.

8 Accordingly, common sense and the teachings of the prior art render the claims invalid  
9 under either Section 102 or Section 103.

10 Moreover, a person of ordinary skill would have been motivated to combine the above  
11 prior art based on the nature of the problem to be solved, the teachings of the prior art, and the  
12 knowledge of persons of ordinary skill in the art. The identified prior art addresses the same or  
13 similar technical issues and suggest the same or similar solutions to those issues. Moreover,  
14 some of the prior art refers to or discusses other prior art, illustrating the close technical  
15 relationship among the prior art.

16 To the extent that Plaintiff challenges a combination of prior art with respect to a  
17 particular element, Defendant reserves the right to seek leave to supplement these contentions to  
18 further specify the motivation to combine the prior art. Defendants may rely on cited or uncited  
19 portions of the prior art, other documents, and fact and expert testimony to establish that a person  
20 of ordinary skill in the art would have been motivated to modify or combine the prior art so as to  
21 render the claims invalid as obvious.

22 Below are several examples of prior art combinations with respect to particular  
23 limitations. These prior art combinations are not exhaustive; rather, they are illustrative examples  
24 of the prior art combinations disclosed generally above. These exemplary combinations are  
25 alternatives to Defendants' anticipation and single reference obviousness contentions, and thus,  
26 they should not be interpreted as indicating that any of the individual references included in the  
27 exemplary combinations are not alone invalidating prior art under 35 U.S.C. §§ 102 and/or 103  
28

1           The '949 patent discloses prior art that includes a substantially identical pitting operation  
2 as that in Claims 5 and 12 (See Figures 1 - 9), wherein holders are translated along a looped  
3 conveyor, and the gripping force exerted on the fruit in the holders can be varied via camming  
4 surfaces. The design and function of the holders, rubber cup, and cam operated gripping  
5 members supporting Claim 5 and 12 are virtually identical to the same structures disclosed in  
6 U.S. Patent 3,556, 281 issued to Magaroli in 1971. Indeed, the '949 Patent admits that the  
7 principal difference between the pitting apparatus shown in the prior art, and that claimed in the  
8 '949 patent is the additional of a wiper assembly in the '949 patent. (col. 11, lines 55 - 60)  
9 Importantly, however, the wiper assembly is not an element of Claims 5 and 12, and thus the  
10 translating pitting apparatus in Claims 5 and 12 is substantially identical to the well known prior  
11 art.

12           The '949 patent further discloses that it was well known in the art that intermittent  
13 conveyor systems were available means of conducting automated pitting operations. (see col. 8,  
14 lines 58 – 63). stating, “Some conventional variations on the above described pitting apparatus  
15 employ an intermittent fruit holder conveyor drive mechanism. In such variations, the fruit  
16 holders are translated into position for pitting, then remain stationary during pitting, and are then  
17 translated away from the pitting position.” (See U.S. Patent No. 3,618,648 issued to Becq in  
18 1971).

19           According to the '949 patent, Claims 5 and 12 merely combine the well known  
20 intermittent drive mechanism with the well known pitting apparatus described in the prior art at  
21 Figures 1 – 9, and that the cams which vary the gripping force are merely replaced with cam  
22 assemblies that vary the gripping force during and after the pitting operation. However, in view  
23 of the admitted prior art before the examiner, Claims 5 and 12 are rendered obvious in view of  
24 the Sunsweet Patent. The Sunsweet Patent discloses a prune pitting apparatus which specifically  
25 identifies the advantages of varying the gripping force used to hold the prune during and after the  
26 pitting operation. In particular, the British Sunsweet patent states that during pitting:

27  
28           As the tip 120a of pitting plunger 120 enters the prune it centres the pit by virtue

1 of its conical shaped surface. Simultaneously, gripping fingers 131 are partially  
2 retracted, thereby allowing the prune to expand. It is to be understood, of course  
3 that the resistance of the pit to be extracted from the flesh will cause an expansion  
4 of the prune, and in order to prevent unnecessary tearing of the prune flesh it must  
5 be allowed to expand. . . . After the prune has been pitted, the pitting plunger is  
6 retracted, but not until the bucket has been pivoted outwards slightly so as to  
7 contact the prune with its bottom finger 118, as shown in Fig. 22. At this time,  
8 the gripping fingers 131 have been moved to fully retracted positions. (Page 6,  
9 Col. 37-57.)

10 In view of the Sunsweet Patent, asserted Claims 5 and 12 are classic instances of merely  
11 combining prior art elements according to known methods to yield predictable results in the  
12 simple mechanical arts. Accordingly, Claims 5 and 12 would have been obvious to a person  
13 having ordinary skill in the art, and are therefore invalid.

14 As with the aforementioned combination of well known methods and apparatus, there are  
15 numerous other combinations of numerous pieces of prior art (including prior art that disclosed  
16 intermittent pitting machines, variable grip holders for the articles being pitted, and which vary  
17 the gripping force in relation to the pitting operation itself) which render the Asserted Claims 5  
18 an 12 obvious. Examples of these additional prior art combinations include:

19 (1) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
20 664,500 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus  
21 employing means for applying a variable gripping force on the fruit during and after the pitting  
22 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting  
23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
24 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for  
25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
26 are used for pitting. In combination, the above identified prior art references merely use those  
27 familiar elements for their primary or well known purposes in a manner well within the ordinary  
28 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
the art would have been familiar with all the claim elements that the patentee used to distinguish  
some of the prior art during prosecution.

(2) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 664,500 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers or knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(3) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 664,500 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers or knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(4) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

664,500 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers or knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(5) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 664,500 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers or knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(6) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 664,500 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus



1 employing means for applying a variable gripping force on the fruit during and after the pitting  
 2 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting  
 3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 4 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for  
 5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
 6 are used for pitting. In combination, the above identified prior art references merely use those  
 7 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 8 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 10 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 11 some of the prior art during prosecution.

12 (7) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 13 664,500 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus  
 14 employing means for applying a variable gripping force on the fruit during and after the pitting  
 15 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting  
 16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 17 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for  
 18 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
 19 are used for pitting. In combination, the above identified prior art references merely use those  
 20 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 21 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 22 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 23 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 24 some of the prior art during prosecution.

25 (8) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 26 664,500 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus  
 27 employing means for applying a variable gripping force on the fruit during and after the pitting  
 28



1 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting  
2 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
3 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for  
4 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
5 are used for pitting. In combination, the above identified prior art references merely use those  
6 familiar elements for their primary or well known purposes in a manner well within the ordinary  
7 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
9 the art would have been familiar with all the claim elements that the patentee used to distinguish  
10 some of the prior art during prosecution.

11 (9) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
12 664,500 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus  
13 employing means for applying a variable gripping force on the fruit during and after the pitting  
14 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting  
15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
16 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for  
17 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
18 are used for pitting. In combination, the above identified prior art references merely use those  
19 familiar elements for their primary or well known purposes in a manner well within the ordinary  
20 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
22 the art would have been familiar with all the claim elements that the patentee used to distinguish  
23 some of the prior art during prosecution.

24 (10) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
25 664,500 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus  
26 employing means for applying a variable gripping force on the fruit during and after the pitting  
27 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting  
28

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
2 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for  
3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
4 are used for pitting. In combination, the above identified prior art references merely use those  
5 familiar elements for their primary or well known purposes in a manner well within the ordinary  
6 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
8 the art would have been familiar with all the claim elements that the patentee used to distinguish  
9 some of the prior art during prosecution.

10 (11) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
11 664,500 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus  
12 employing means for applying a variable gripping force on the fruit during and after the pitting  
13 operation to more efficiently conduct pitting. Pat No.664,500 discloses an intermittent pitting  
14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
15 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for  
16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
17 are used for pitting. In combination, the above identified prior art references merely use those  
18 familiar elements for their primary or well known purposes in a manner well within the ordinary  
19 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
21 the art would have been familiar with all the claim elements that the patentee used to distinguish  
22 some of the prior art during prosecution.

23 (12) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
24 664,500 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus  
25 employing means for applying a variable gripping force on the fruit during and after the pitting  
26 operation to more efficiently conduct pitting. Pat No.664,500 discloses an intermittent pitting  
27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
28

1 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for  
2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
3 are used for pitting. In combination, the above identified prior art references merely use those  
4 familiar elements for their primary or well known purposes in a manner well within the ordinary  
5 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
7 the art would have been familiar with all the claim elements that the patentee used to distinguish  
8 some of the prior art during prosecution.

9 (13) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
10 664,500 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus  
11 employing means for applying a variable gripping force on the fruit during and after the pitting  
12 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting  
13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
14 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for  
15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
16 are used for pitting. In combination, the above identified prior art references merely use those  
17 familiar elements for their primary or well known purposes in a manner well within the ordinary  
18 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
20 the art would have been familiar with all the claim elements that the patentee used to distinguish  
21 some of the prior art during prosecution.

22 (14) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
23 664,500 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus  
24 employing means for applying a variable gripping force on the fruit during and after the pitting  
25 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting  
26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
27 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for  
28

1 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
2 are used for pitting. In combination, the above identified prior art references merely use those  
3 familiar elements for their primary or well known purposes in a manner well within the ordinary  
4 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
5 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
6 the art would have been familiar with all the claim elements that the patentee used to distinguish  
7 some of the prior art during prosecution.

8 (15) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
9 664,500 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus  
10 employing means for applying a variable gripping force on the fruit during and after the pitting  
11 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting  
12 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
13 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for  
14 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
15 are used for pitting. In combination, the above identified prior art references merely use those  
16 familiar elements for their primary or well known purposes in a manner well within the ordinary  
17 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
18 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
19 the art would have been familiar with all the claim elements that the patentee used to distinguish  
20 some of the prior art during prosecution.

21 (16) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
22 2,558,205 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus  
23 employing means for applying a variable gripping force on the fruit during and after the pitting  
24 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
25 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
26 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for  
27 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
28

1 are used for pitting. In combination, the above identified prior art references merely use those  
2 familiar elements for their primary or well known purposes in a manner well within the ordinary  
3 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
4 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
5 the art would have been familiar with all the claim elements that the patentee used to distinguish  
6 some of the prior art during prosecution.

7 (17) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
8 2,558,205 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus  
9 employing means for applying a variable gripping force on the fruit during and after the pitting  
10 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
11 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
12 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for  
13 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
14 are used for pitting. In combination, the above identified prior art references merely use those  
15 familiar elements for their primary or well known purposes in a manner well within the ordinary  
16 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
17 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
18 the art would have been familiar with all the claim elements that the patentee used to distinguish  
19 some of the prior art during prosecution.

20 (18) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
21 2,558,205 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus  
22 employing means for applying a variable gripping force on the fruit during and after the pitting  
23 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
24 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
25 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for  
26 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
27 are used for pitting. In combination, the above identified prior art references merely use those  
28

1 familiar elements for their primary or well known purposes in a manner well within the ordinary  
2 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
4 the art would have been familiar with all the claim elements that the patentee used to distinguish  
5 some of the prior art during prosecution.

6 (19) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
7 2,558,205 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus  
8 employing means for applying a variable gripping force on the fruit during and after the pitting  
9 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
10 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
11 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for  
12 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
13 are used for pitting. In combination, the above identified prior art references merely use those  
14 familiar elements for their primary or well known purposes in a manner well within the ordinary  
15 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
16 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
17 the art would have been familiar with all the claim elements that the patentee used to distinguish  
18 some of the prior art during prosecution.

19 (20) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
20 2,558,205 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus  
21 employing means for applying a variable gripping force on the fruit during and after the pitting  
22 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
24 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for  
25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
26 are used for pitting. In combination, the above identified prior art references merely use those  
27 familiar elements for their primary or well known purposes in a manner well within the ordinary  
28

1 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
3 the art would have been familiar with all the claim elements that the patentee used to distinguish  
4 some of the prior art during prosecution.

5 (21) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
6 2,558,205 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus  
7 employing means for applying a variable gripping force on the fruit during and after the pitting  
8 operation to more efficiently conduct pitting. Pat No.2,558,205 discloses an intermittent pitting  
9 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
10 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for  
11 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
12 are used for pitting. In combination, the above identified prior art references merely use those  
13 familiar elements for their primary or well known purposes in a manner well within the ordinary  
14 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
15 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
16 the art would have been familiar with all the claim elements that the patentee used to distinguish  
17 some of the prior art during prosecution.

18 (22) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
19 2,558,205 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus  
20 employing means for applying a variable gripping force on the fruit during and after the pitting  
21 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
22 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
23 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for  
24 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
25 are used for pitting. In combination, the above identified prior art references merely use those  
26 familiar elements for their primary or well known purposes in a manner well within the ordinary  
27 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
28



1 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
2 the art would have been familiar with all the claim elements that the patentee used to distinguish  
3 some of the prior art during prosecution.

4 (23) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
5 2,558,205 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus  
6 employing means for applying a variable gripping force on the fruit during and after the pitting  
7 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
9 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for  
10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
11 are used for pitting. In combination, the above identified prior art references merely use those  
12 familiar elements for their primary or well known purposes in a manner well within the ordinary  
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
15 the art would have been familiar with all the claim elements that the patentee used to distinguish  
16 some of the prior art during prosecution.

17 (24) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
18 2,558,205 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus  
19 employing means for applying a variable gripping force on the fruit during and after the pitting  
20 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
22 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for  
23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
24 are used for pitting. In combination, the above identified prior art references merely use those  
25 familiar elements for their primary or well known purposes in a manner well within the ordinary  
26 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
28



1 the art would have been familiar with all the claim elements that the patentee used to distinguish  
2 some of the prior art during prosecution.

3 (25) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
4 2,558,205 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus  
5 employing means for applying a variable gripping force on the fruit during and after the pitting  
6 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
7 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
8 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for  
9 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
10 are used for pitting. In combination, the above identified prior art references merely use those  
11 familiar elements for their primary or well known purposes in a manner well within the ordinary  
12 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
13 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
14 the art would have been familiar with all the claim elements that the patentee used to distinguish  
15 some of the prior art during prosecution.

16 (26) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
17 2,558,205 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus  
18 employing means for applying a variable gripping force on the fruit during and after the pitting  
19 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
20 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
21 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for  
22 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
23 are used for pitting. In combination, the above identified prior art references merely use those  
24 familiar elements for their primary or well known purposes in a manner well within the ordinary  
25 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
26 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
27 the art would have been familiar with all the claim elements that the patentee used to distinguish  
28

1 some of the prior art during prosecution.

2 (27) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
3 2,558,205 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus  
4 employing means for applying a variable gripping force on the fruit during and after the pitting  
5 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
6 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
7 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for  
8 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
9 are used for pitting. In combination, the above identified prior art references merely use those  
10 familiar elements for their primary or well known purposes in a manner well within the ordinary  
11 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
12 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
13 the art would have been familiar with all the claim elements that the patentee used to distinguish  
14 some of the prior art during prosecution.

15 (28) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
16 2,558,205 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus  
17 employing means for applying a variable gripping force on the fruit during and after the pitting  
18 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
19 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
20 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for  
21 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
22 are used for pitting. In combination, the above identified prior art references merely use those  
23 familiar elements for their primary or well known purposes in a manner well within the ordinary  
24 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
25 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
26 the art would have been familiar with all the claim elements that the patentee used to distinguish  
27 some of the prior art during prosecution.

1           (29) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
2 2558,205 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus  
3 employing means for applying a variable gripping force on the fruit during and after the pitting  
4 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
5 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
6 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for  
7 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
8 are used for pitting. In combination, the above identified prior art references merely use those  
9 familiar elements for their primary or well known purposes in a manner well within the ordinary  
10 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
11 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
12 the art would have been familiar with all the claim elements that the patentee used to distinguish  
13 some of the prior art during prosecution.

14           (30) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
15 2,558,205 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus  
16 employing means for applying a variable gripping force on the fruit during and after the pitting  
17 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting  
18 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
19 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for  
20 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
21 are used for pitting. In combination, the above identified prior art references merely use those  
22 familiar elements for their primary or well known purposes in a manner well within the ordinary  
23 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
24 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
25 the art would have been familiar with all the claim elements that the patentee used to distinguish  
26 some of the prior art during prosecution.

27           (31) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
28

1 3,318,349 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus  
 2 employing means for applying a variable gripping force on the fruit during and after the pitting  
 3 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
 4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 5 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for  
 6 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
 7 are used for pitting. In combination, the above identified prior art references merely use those  
 8 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 9 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 11 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 12 some of the prior art during prosecution.

13 (32) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 14 3,318,349 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus  
 15 employing means for applying a variable gripping force on the fruit during and after the pitting  
 16 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
 17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 18 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for  
 19 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
 20 are used for pitting. In combination, the above identified prior art references merely use those  
 21 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 22 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 24 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 25 some of the prior art during prosecution.

26 (33) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 27 3,318,349 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus  
 28

1 employing means for applying a variable gripping force on the fruit during and after the pitting  
2 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
4 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for  
5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
6 are used for pitting. In combination, the above identified prior art references merely use those  
7 familiar elements for their primary or well known purposes in a manner well within the ordinary  
8 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
10 the art would have been familiar with all the claim elements that the patentee used to distinguish  
11 some of the prior art during prosecution.

12 (34) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
13 3,318,349 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus  
14 employing means for applying a variable gripping force on the fruit during and after the pitting  
15 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
17 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for  
18 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
19 are used for pitting. In combination, the above identified prior art references merely use those  
20 familiar elements for their primary or well known purposes in a manner well within the ordinary  
21 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
22 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
23 the art would have been familiar with all the claim elements that the patentee used to distinguish  
24 some of the prior art during prosecution.

25 (35) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
26 3,318,349 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus  
27 employing means for applying a variable gripping force on the fruit during and after the pitting  
28

operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(36) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 3,318,349 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(37) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 3,318,349 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
2 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for  
3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
4 are used for pitting. In combination, the above identified prior art references merely use those  
5 familiar elements for their primary or well known purposes in a manner well within the ordinary  
6 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
8 the art would have been familiar with all the claim elements that the patentee used to distinguish  
9 some of the prior art during prosecution.

10 (38) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
11 3,318,349 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus  
12 employing means for applying a variable gripping force on the fruit during and after the pitting  
13 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
15 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for  
16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
17 are used for pitting. In combination, the above identified prior art references merely use those  
18 familiar elements for their primary or well known purposes in a manner well within the ordinary  
19 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
21 the art would have been familiar with all the claim elements that the patentee used to distinguish  
22 some of the prior art during prosecution.

23 (39) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
24 3,318,349 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus  
25 employing means for applying a variable gripping force on the fruit during and after the pitting  
26 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
28



1 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for  
2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
3 are used for pitting. In combination, the above identified prior art references merely use those  
4 familiar elements for their primary or well known purposes in a manner well within the ordinary  
5 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
7 the art would have been familiar with all the claim elements that the patentee used to distinguish  
8 some of the prior art during prosecution.

9 (40) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
10 3,318,349 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus  
11 employing means for applying a variable gripping force on the fruit during and after the pitting  
12 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
14 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for  
15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
16 are used for pitting. In combination, the above identified prior art references merely use those  
17 familiar elements for their primary or well known purposes in a manner well within the ordinary  
18 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
20 the art would have been familiar with all the claim elements that the patentee used to distinguish  
21 some of the prior art during prosecution.

22 (41) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
23 3,318,349 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus  
24 employing means for applying a variable gripping force on the fruit during and after the pitting  
25 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
27 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for  
28



1 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
2 are used for pitting. In combination, the above identified prior art references merely use those  
3 familiar elements for their primary or well known purposes in a manner well within the ordinary  
4 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
5 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
6 the art would have been familiar with all the claim elements that the patentee used to distinguish  
7 some of the prior art during prosecution.

8 (42) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
9 3,318,349 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus  
10 employing means for applying a variable gripping force on the fruit during and after the pitting  
11 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
12 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
13 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for  
14 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
15 are used for pitting. In combination, the above identified prior art references merely use those  
16 familiar elements for their primary or well known purposes in a manner well within the ordinary  
17 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
18 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
19 the art would have been familiar with all the claim elements that the patentee used to distinguish  
20 some of the prior art during prosecution.

21 (43) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
22 3,318,349 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus  
23 employing means for applying a variable gripping force on the fruit during and after the pitting  
24 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
25 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
26 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for  
27 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
28

1 are used for pitting. In combination, the above identified prior art references merely use those  
2 familiar elements for their primary or well known purposes in a manner well within the ordinary  
3 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
4 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
5 the art would have been familiar with all the claim elements that the patentee used to distinguish  
6 some of the prior art during prosecution.

7 (44) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
8 3,318,349 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus  
9 employing means for applying a variable gripping force on the fruit during and after the pitting  
10 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
11 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
12 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for  
13 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
14 are used for pitting. In combination, the above identified prior art references merely use those  
15 familiar elements for their primary or well known purposes in a manner well within the ordinary  
16 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
17 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
18 the art would have been familiar with all the claim elements that the patentee used to distinguish  
19 some of the prior art during prosecution.

20 (45) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
21 3,318,349 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus  
22 employing means for applying a variable gripping force on the fruit during and after the pitting  
23 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting  
24 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
25 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for  
26 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
27 are used for pitting. In combination, the above identified prior art references merely use those  
28

1 familiar elements for their primary or well known purposes in a manner well within the ordinary  
2 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
4 the art would have been familiar with all the claim elements that the patentee used to distinguish  
5 some of the prior art during prosecution.

6 (46) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
7 2,360,103 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus  
8 employing means for applying a variable gripping force on the fruit during and after the pitting  
9 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
10 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
11 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for  
12 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
13 are used for pitting. In combination, the above identified prior art references merely use those  
14 familiar elements for their primary or well known purposes in a manner well within the ordinary  
15 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
16 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
17 the art would have been familiar with all the claim elements that the patentee used to distinguish  
18 some of the prior art during prosecution.

19 (47) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
20 2,360,103 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus  
21 employing means for applying a variable gripping force on the fruit during and after the pitting  
22 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
24 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for  
25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
26 are used for pitting. In combination, the above identified prior art references merely use those  
27 familiar elements for their primary or well known purposes in a manner well within the ordinary  
28

1 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
3 the art would have been familiar with all the claim elements that the patentee used to distinguish  
4 some of the prior art during prosecution.

5 (48) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
6 2,360,103 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus  
7 employing means for applying a variable gripping force on the fruit during and after the pitting  
8 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
9 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
10 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for  
11 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
12 are used for pitting. In combination, the above identified prior art references merely use those  
13 familiar elements for their primary or well known purposes in a manner well within the ordinary  
14 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
15 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
16 the art would have been familiar with all the claim elements that the patentee used to distinguish  
17 some of the prior art during prosecution.

18 (49) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
19 2,360,103 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus  
20 employing means for applying a variable gripping force on the fruit during and after the pitting  
21 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
22 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
23 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for  
24 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
25 are used for pitting. In combination, the above identified prior art references merely use those  
26 familiar elements for their primary or well known purposes in a manner well within the ordinary  
27 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
28

1 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
2 the art would have been familiar with all the claim elements that the patentee used to distinguish  
3 some of the prior art during prosecution.

4 (50) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
5 2,360,103 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus  
6 employing means for applying a variable gripping force on the fruit during and after the pitting  
7 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
9 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for  
10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
11 are used for pitting. In combination, the above identified prior art references merely use those  
12 familiar elements for their primary or well known purposes in a manner well within the ordinary  
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
15 the art would have been familiar with all the claim elements that the patentee used to distinguish  
16 some of the prior art during prosecution.

17 (51) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
18 2,360,13 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus  
19 employing means for applying a variable gripping force on the fruit during and after the pitting  
20 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
22 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for  
23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
24 are used for pitting. In combination, the above identified prior art references merely use those  
25 familiar elements for their primary or well known purposes in a manner well within the ordinary  
26 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
28

1 the art would have been familiar with all the claim elements that the patentee used to distinguish  
2 some of the prior art during prosecution.

3 (52) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
4 2,360,103 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus  
5 employing means for applying a variable gripping force on the fruit during and after the pitting  
6 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
7 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
8 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for  
9 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
10 are used for pitting. In combination, the above identified prior art references merely use those  
11 familiar elements for their primary or well known purposes in a manner well within the ordinary  
12 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
13 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
14 the art would have been familiar with all the claim elements that the patentee used to distinguish  
15 some of the prior art during prosecution.

16 (53) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
17 2,360,103 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus  
18 employing means for applying a variable gripping force on the fruit during and after the pitting  
19 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
20 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
21 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for  
22 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
23 are used for pitting. In combination, the above identified prior art references merely use those  
24 familiar elements for their primary or well known purposes in a manner well within the ordinary  
25 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
26 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
27 the art would have been familiar with all the claim elements that the patentee used to distinguish  
28

1 some of the prior art during prosecution.

2 (54) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
3 2,360,103 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus  
4 employing means for applying a variable gripping force on the fruit during and after the pitting  
5 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
6 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
7 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for  
8 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
9 are used for pitting. In combination, the above identified prior art references merely use those  
10 familiar elements for their primary or well known purposes in a manner well within the ordinary  
11 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
12 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
13 the art would have been familiar with all the claim elements that the patentee used to distinguish  
14 some of the prior art during prosecution.

15 (55) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
16 2,360,103 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus  
17 employing means for applying a variable gripping force on the fruit during and after the pitting  
18 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
19 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
20 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for  
21 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
22 are used for pitting. In combination, the above identified prior art references merely use those  
23 familiar elements for their primary or well known purposes in a manner well within the ordinary  
24 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
25 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
26 the art would have been familiar with all the claim elements that the patentee used to distinguish  
27 some of the prior art during prosecution.



1 (56) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
2 2,360,103 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus  
3 employing means for applying a variable gripping force on the fruit during and after the pitting  
4 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
5 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
6 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for  
7 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
8 are used for pitting. In combination, the above identified prior art references merely use those  
9 familiar elements for their primary or well known purposes in a manner well within the ordinary  
10 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
11 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
12 the art would have been familiar with all the claim elements that the patentee used to distinguish  
13 some of the prior art during prosecution.

14 (57) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
15 2,360,103 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus  
16 employing means for applying a variable gripping force on the fruit during and after the pitting  
17 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
18 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
19 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for  
20 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
21 are used for pitting. In combination, the above identified prior art references merely use those  
22 familiar elements for their primary or well known purposes in a manner well within the ordinary  
23 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
24 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
25 the art would have been familiar with all the claim elements that the patentee used to distinguish  
26 some of the prior art during prosecution.

27 (58) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
28



1 2,360,103 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus  
 2 employing means for applying a variable gripping force on the fruit during and after the pitting  
 3 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
 4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 5 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for  
 6 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
 7 are used for pitting. In combination, the above identified prior art references merely use those  
 8 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 9 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 11 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 12 some of the prior art during prosecution.

13 (59) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 14 2,360,103 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus  
 15 employing means for applying a variable gripping force on the fruit during and after the pitting  
 16 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
 17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 18 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for  
 19 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
 20 are used for pitting. In combination, the above identified prior art references merely use those  
 21 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 22 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 24 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 25 some of the prior art during prosecution.

26 (60) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 27 2,360,103 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus  
 28

1 employing means for applying a variable gripping force on the fruit during and after the pitting  
2 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting  
3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
4 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for  
5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
6 are used for pitting. In combination, the above identified prior art references merely use those  
7 familiar elements for their primary or well known purposes in a manner well within the ordinary  
8 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
10 the art would have been familiar with all the claim elements that the patentee used to distinguish  
11 some of the prior art during prosecution.

12 (61) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
13 1,443,621 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus  
14 employing means for applying a variable gripping force on the fruit during and after the pitting  
15 operation to more efficiently conduct pitting. Pat No.1,443,621 discloses an intermittent pitting  
16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
17 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for  
18 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
19 are used for pitting. In combination, the above identified prior art references merely use those  
20 familiar elements for their primary or well known purposes in a manner well within the ordinary  
21 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
22 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
23 the art would have been familiar with all the claim elements that the patentee used to distinguish  
24 some of the prior art during prosecution.

25 (62) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
26 1,443,621 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus  
27 employing means for applying a variable gripping force on the fruit during and after the pitting  
28

1 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
2 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
3 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for  
4 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
5 are used for pitting. In combination, the above identified prior art references merely use those  
6 familiar elements for their primary or well known purposes in a manner well within the ordinary  
7 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
9 the art would have been familiar with all the claim elements that the patentee used to distinguish  
10 some of the prior art during prosecution.

11 (63) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
12 1,443,621 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus  
13 employing means for applying a variable gripping force on the fruit during and after the pitting  
14 operation to more efficiently conduct pitting. Pat No.1,443,621 discloses an intermittent pitting  
15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
16 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for  
17 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
18 are used for pitting. In combination, the above identified prior art references merely use those  
19 familiar elements for their primary or well known purposes in a manner well within the ordinary  
20 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
22 the art would have been familiar with all the claim elements that the patentee used to distinguish  
23 some of the prior art during prosecution.

24 (64) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
25 1,443,621 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus  
26 employing means for applying a variable gripping force on the fruit during and after the pitting  
27 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
28

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
2 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for  
3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
4 are used for pitting. In combination, the above identified prior art references merely use those  
5 familiar elements for their primary or well known purposes in a manner well within the ordinary  
6 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
8 the art would have been familiar with all the claim elements that the patentee used to distinguish  
9 some of the prior art during prosecution.

10 (65) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
11 1,443,621 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus  
12 employing means for applying a variable gripping force on the fruit during and after the pitting  
13 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
15 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for  
16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
17 are used for pitting. In combination, the above identified prior art references merely use those  
18 familiar elements for their primary or well known purposes in a manner well within the ordinary  
19 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
21 the art would have been familiar with all the claim elements that the patentee used to distinguish  
22 some of the prior art during prosecution.

23 (66) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
24 1,443,612 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus  
25 employing means for applying a variable gripping force on the fruit during and after the pitting  
26 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
28

1 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for  
2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
3 are used for pitting. In combination, the above identified prior art references merely use those  
4 familiar elements for their primary or well known purposes in a manner well within the ordinary  
5 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
7 the art would have been familiar with all the claim elements that the patentee used to distinguish  
8 some of the prior art during prosecution.

9 (67) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
10 1,443,621 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus  
11 employing means for applying a variable gripping force on the fruit during and after the pitting  
12 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
14 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for  
15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
16 are used for pitting. In combination, the above identified prior art references merely use those  
17 familiar elements for their primary or well known purposes in a manner well within the ordinary  
18 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
20 the art would have been familiar with all the claim elements that the patentee used to distinguish  
21 some of the prior art during prosecution.

22 (68) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
23 1,443,621 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus  
24 employing means for applying a variable gripping force on the fruit during and after the pitting  
25 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
27 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for  
28

1 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
2 are used for pitting. In combination, the above identified prior art references merely use those  
3 familiar elements for their primary or well known purposes in a manner well within the ordinary  
4 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
5 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
6 the art would have been familiar with all the claim elements that the patentee used to distinguish  
7 some of the prior art during prosecution.

8 (69) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
9 1,443,621 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus  
10 employing means for applying a variable gripping force on the fruit during and after the pitting  
11 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
12 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
13 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for  
14 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
15 are used for pitting. In combination, the above identified prior art references merely use those  
16 familiar elements for their primary or well known purposes in a manner well within the ordinary  
17 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
18 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
19 the art would have been familiar with all the claim elements that the patentee used to distinguish  
20 some of the prior art during prosecution.

21 (70) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
22 1,443,621 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus  
23 employing means for applying a variable gripping force on the fruit during and after the pitting  
24 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
25 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
26 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for  
27 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
28 are used for pitting. In combination, the above identified prior art references merely use those

1 familiar elements for their primary or well known purposes in a manner well within the ordinary  
2 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
4 the art would have been familiar with all the claim elements that the patentee used to distinguish  
5 some of the prior art during prosecution.

6 (71) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
7 1,443,621 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus  
8 employing means for applying a variable gripping force on the fruit during and after the pitting  
9 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
10 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
11 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for  
12 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
13 are used for pitting. In combination, the above identified prior art references merely use those  
14 familiar elements for their primary or well known purposes in a manner well within the ordinary  
15 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
16 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
17 the art would have been familiar with all the claim elements that the patentee used to distinguish  
18 some of the prior art during prosecution.

19 (72) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
20 1,443,621 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus  
21 employing means for applying a variable gripping force on the fruit during and after the pitting  
22 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
24 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for  
25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
26 are used for pitting. In combination, the above identified prior art references merely use those  
27 familiar elements for their primary or well known purposes in a manner well within the ordinary  
28 level of skill in the art. Since there were a finite number of predictable solutions, a person of



1 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
2 the art would have been familiar with all the claim elements that the patentee used to distinguish  
3 some of the prior art during prosecution.

4 (73) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
5 1,443,621 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus  
6 employing means for applying a variable gripping force on the fruit during and after the pitting  
7 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
9 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for  
10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
11 are used for pitting. In combination, the above identified prior art references merely use those  
12 familiar elements for their primary or well known purposes in a manner well within the ordinary  
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
15 the art would have been familiar with all the claim elements that the patentee used to distinguish  
16 some of the prior art during prosecution.

17 (74) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
18 1,443,621 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus  
19 employing means for applying a variable gripping force on the fruit during and after the pitting  
20 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
22 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for  
23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
24 are used for pitting. In combination, the above identified prior art references merely use those  
25 familiar elements for their primary or well known purposes in a manner well within the ordinary  
26 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
28 the art would have been familiar with all the claim elements that the patentee used to distinguish



1 some of the prior art during prosecution.

2 (75) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
3 1,443,621 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus  
4 employing means for applying a variable gripping force on the fruit during and after the pitting  
5 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting  
6 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
7 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for  
8 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
9 are used for pitting. In combination, the above identified prior art references merely use those  
10 familiar elements for their primary or well known purposes in a manner well within the ordinary  
11 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
12 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
13 the art would have been familiar with all the claim elements that the patentee used to distinguish  
14 some of the prior art during prosecution.

15 (76) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
16 3,088,582 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus  
17 employing means for applying a variable gripping force on the fruit during and after the pitting  
18 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
19 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
20 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for  
21 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
22 are used for pitting. In combination, the above identified prior art references merely use those  
23 familiar elements for their primary or well known purposes in a manner well within the ordinary  
24 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
25 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
26 the art would have been familiar with all the claim elements that the patentee used to distinguish  
27 some of the prior art during prosecution.

28 (77) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

1 3,088,582 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus  
 2 employing means for applying a variable gripping force on the fruit during and after the pitting  
 3 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
 4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 5 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for  
 6 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
 7 are used for pitting. In combination, the above identified prior art references merely use those  
 8 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 9 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 11 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 12 some of the prior art during prosecution.

13 (78) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 14 3,088,582 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus  
 15 employing means for applying a variable gripping force on the fruit during and after the pitting  
 16 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
 17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 18 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for  
 19 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
 20 are used for pitting. In combination, the above identified prior art references merely use those  
 21 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 22 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 24 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 25 some of the prior art during prosecution.

26 (79) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 27 3,088,582 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus  
 28 employing means for applying a variable gripping force on the fruit during and after the pitting

operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(80) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 3,088,582 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(81) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 3,088,582 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used

1 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for  
2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
3 are used for pitting. In combination, the above identified prior art references merely use those  
4 familiar elements for their primary or well known purposes in a manner well within the ordinary  
5 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
7 the art would have been familiar with all the claim elements that the patentee used to distinguish  
8 some of the prior art during prosecution.

9 (82) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
10 3,088,582 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus  
11 employing means for applying a variable gripping force on the fruit during and after the pitting  
12 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
14 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for  
15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
16 are used for pitting. In combination, the above identified prior art references merely use those  
17 familiar elements for their primary or well known purposes in a manner well within the ordinary  
18 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
20 the art would have been familiar with all the claim elements that the patentee used to distinguish  
21 some of the prior art during prosecution.

22 (83) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
23 3,088,582 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus  
24 employing means for applying a variable gripping force on the fruit during and after the pitting  
25 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
27 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for  
28 translating the fruit through the apparatus to the pitting station where pitting plungers of knives

1 are used for pitting. In combination, the above identified prior art references merely use those  
2 familiar elements for their primary or well known purposes in a manner well within the ordinary  
3 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
4 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
5 the art would have been familiar with all the claim elements that the patentee used to distinguish  
6 some of the prior art during prosecution.

7 (84) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
8 3,088,582 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus  
9 employing means for applying a variable gripping force on the fruit during and after the pitting  
10 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
11 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
12 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for  
13 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
14 are used for pitting. In combination, the above identified prior art references merely use those  
15 familiar elements for their primary or well known purposes in a manner well within the ordinary  
16 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
17 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
18 the art would have been familiar with all the claim elements that the patentee used to distinguish  
19 some of the prior art during prosecution.

20 (85) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
21 3,088,582 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus  
22 employing means for applying a variable gripping force on the fruit during and after the pitting  
23 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
24 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
25 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for  
26 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
27 are used for pitting. In combination, the above identified prior art references merely use those  
28 familiar elements for their primary or well known purposes in a manner well within the ordinary

1 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
3 the art would have been familiar with all the claim elements that the patentee used to distinguish  
4 some of the prior art during prosecution.

5 (86) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
6 3,088,582 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus  
7 employing means for applying a variable gripping force on the fruit during and after the pitting  
8 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
9 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
10 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for  
11 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
12 are used for pitting. In combination, the above identified prior art references merely use those  
13 familiar elements for their primary or well known purposes in a manner well within the ordinary  
14 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
15 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
16 the art would have been familiar with all the claim elements that the patentee used to distinguish  
17 some of the prior art during prosecution.

18 (87) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
19 3,088,582 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus  
20 employing means for applying a variable gripping force on the fruit during and after the pitting  
21 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
22 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
23 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for  
24 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
25 are used for pitting. In combination, the above identified prior art references merely use those  
26 familiar elements for their primary or well known purposes in a manner well within the ordinary  
27 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
28 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in

1 the art would have been familiar with all the claim elements that the patentee used to distinguish  
2 some of the prior art during prosecution.

3 (88) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
4 3,088,582 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus  
5 employing means for applying a variable gripping force on the fruit during and after the pitting  
6 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
7 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
8 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for  
9 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
10 are used for pitting. In combination, the above identified prior art references merely use those  
11 familiar elements for their primary or well known purposes in a manner well within the ordinary  
12 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
13 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
14 the art would have been familiar with all the claim elements that the patentee used to distinguish  
15 some of the prior art during prosecution.

16 (89) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
17 3,088,582 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus  
18 employing means for applying a variable gripping force on the fruit during and after the pitting  
19 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting  
20 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
21 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for  
22 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
23 are used for pitting. In combination, the above identified prior art references merely use those  
24 familiar elements for their primary or well known purposes in a manner well within the ordinary  
25 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
26 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
27 the art would have been familiar with all the claim elements that the patentee used to distinguish  
28 some of the prior art during prosecution.



(90) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 3,088,582 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers or knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(91) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 3,291,172 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers or knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(92) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 3,291,172 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus



1 employing means for applying a variable gripping force on the fruit during and after the pitting  
2 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
4 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for  
5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
6 are used for pitting. In combination, the above identified prior art references merely use those  
7 familiar elements for their primary or well known purposes in a manner well within the ordinary  
8 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
10 the art would have been familiar with all the claim elements that the patentee used to distinguish  
11 some of the prior art during prosecution.

12 (93) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
13 3,291,172 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus  
14 employing means for applying a variable gripping force on the fruit during and after the pitting  
15 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
17 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for  
18 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
19 are used for pitting. In combination, the above identified prior art references merely use those  
20 familiar elements for their primary or well known purposes in a manner well within the ordinary  
21 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
22 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
23 the art would have been familiar with all the claim elements that the patentee used to distinguish  
24 some of the prior art during prosecution.

25 (94) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
26 3,291,172 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus  
27 employing means for applying a variable gripping force on the fruit during and after the pitting  
28 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
2 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for  
3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
4 are used for pitting. In combination, the above identified prior art references merely use those  
5 familiar elements for their primary or well known purposes in a manner well within the ordinary  
6 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
8 the art would have been familiar with all the claim elements that the patentee used to distinguish  
9 some of the prior art during prosecution.

10 (95) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
11 3,291,172 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus  
12 employing means for applying a variable gripping force on the fruit during and after the pitting  
13 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
15 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for  
16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
17 are used for pitting. In combination, the above identified prior art references merely use those  
18 familiar elements for their primary or well known purposes in a manner well within the ordinary  
19 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
21 the art would have been familiar with all the claim elements that the patentee used to distinguish  
22 some of the prior art during prosecution.

23 (96) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
24 3,291,172 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus  
25 employing means for applying a variable gripping force on the fruit during and after the pitting  
26 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
28 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for

1 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
2 are used for pitting. In combination, the above identified prior art references merely use those  
3 familiar elements for their primary or well known purposes in a manner well within the ordinary  
4 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
5 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
6 the art would have been familiar with all the claim elements that the patentee used to distinguish  
7 some of the prior art during prosecution.

8 (97) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
9 3,291,172 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus  
10 employing means for applying a variable gripping force on the fruit during and after the pitting  
11 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
12 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
13 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for  
14 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
15 are used for pitting. In combination, the above identified prior art references merely use those  
16 familiar elements for their primary or well known purposes in a manner well within the ordinary  
17 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
18 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
19 the art would have been familiar with all the claim elements that the patentee used to distinguish  
20 some of the prior art during prosecution.

21 (98) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
22 3,291,172 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus  
23 employing means for applying a variable gripping force on the fruit during and after the pitting  
24 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
25 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
26 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for  
27 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
28 are used for pitting. In combination, the above identified prior art references merely use those

1 familiar elements for their primary or well known purposes in a manner well within the ordinary  
2 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
4 the art would have been familiar with all the claim elements that the patentee used to distinguish  
5 some of the prior art during prosecution.

6 (99) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
7 3,291,172 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus  
8 employing means for applying a variable gripping force on the fruit during and after the pitting  
9 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
10 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
11 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for  
12 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
13 are used for pitting. In combination, the above identified prior art references merely use those  
14 familiar elements for their primary or well known purposes in a manner well within the ordinary  
15 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
16 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
17 the art would have been familiar with all the claim elements that the patentee used to distinguish  
18 some of the prior art during prosecution.

19 (100) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
20 3,291,172 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus  
21 employing means for applying a variable gripping force on the fruit during and after the pitting  
22 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
24 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for  
25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
26 are used for pitting. In combination, the above identified prior art references merely use those  
27 familiar elements for their primary or well known purposes in a manner well within the ordinary  
28 level of skill in the art. Since there were a finite number of predictable solutions, a person of

1 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
2 the art would have been familiar with all the claim elements that the patentee used to distinguish  
3 some of the prior art during prosecution.

4 (101) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
5 3,291,172 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus  
6 employing means for applying a variable gripping force on the fruit during and after the pitting  
7 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
9 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for  
10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
11 are used for pitting. In combination, the above identified prior art references merely use those  
12 familiar elements for their primary or well known purposes in a manner well within the ordinary  
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
15 the art would have been familiar with all the claim elements that the patentee used to distinguish  
16 some of the prior art during prosecution.

17 (102) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
18 3,291,172 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus  
19 employing means for applying a variable gripping force on the fruit during and after the pitting  
20 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
22 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for  
23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
24 are used for pitting. In combination, the above identified prior art references merely use those  
25 familiar elements for their primary or well known purposes in a manner well within the ordinary  
26 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
28 the art would have been familiar with all the claim elements that the patentee used to distinguish

1 some of the prior art during prosecution.

2 (103) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
3 3,291,172 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus  
4 employing means for applying a variable gripping force on the fruit during and after the pitting  
5 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
6 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
7 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for  
8 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
9 are used for pitting. In combination, the above identified prior art references merely use those  
10 familiar elements for their primary or well known purposes in a manner well within the ordinary  
11 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
12 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
13 the art would have been familiar with all the claim elements that the patentee used to distinguish  
14 some of the prior art during prosecution.

15 (104) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
16 3,291,172 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus  
17 employing means for applying a variable gripping force on the fruit during and after the pitting  
18 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
19 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
20 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for  
21 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
22 are used for pitting. In combination, the above identified prior art references merely use those  
23 familiar elements for their primary or well known purposes in a manner well within the ordinary  
24 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
25 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
26 the art would have been familiar with all the claim elements that the patentee used to distinguish  
27 some of the prior art during prosecution.

28 (105) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

1 3,291,172 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus  
 2 employing means for applying a variable gripping force on the fruit during and after the pitting  
 3 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting  
 4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 5 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for  
 6 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
 7 are used for pitting. In combination, the above identified prior art references merely use those  
 8 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 9 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 11 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 12 some of the prior art during prosecution.

13 (106) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 14 4,009,650 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus  
 15 employing means for applying a variable gripping force on the fruit during and after the pitting  
 16 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
 17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 18 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for  
 19 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
 20 are used for pitting. In combination, the above identified prior art references merely use those  
 21 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 22 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 24 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 25 some of the prior art during prosecution.

26 (107) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 27 4,009,650 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus  
 28 employing means for applying a variable gripping force on the fruit during and after the pitting



1 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
2 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
3 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for  
4 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
5 are used for pitting. In combination, the above identified prior art references merely use those  
6 familiar elements for their primary or well known purposes in a manner well within the ordinary  
7 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
9 the art would have been familiar with all the claim elements that the patentee used to distinguish  
10 some of the prior art during prosecution.

11 (108) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
12 4,009,650 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus  
13 employing means for applying a variable gripping force on the fruit during and after the pitting  
14 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
16 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for  
17 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
18 are used for pitting. In combination, the above identified prior art references merely use those  
19 familiar elements for their primary or well known purposes in a manner well within the ordinary  
20 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
22 the art would have been familiar with all the claim elements that the patentee used to distinguish  
23 some of the prior art during prosecution.

24 (109) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
25 4,009,650 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus  
26 employing means for applying a variable gripping force on the fruit during and after the pitting  
27 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
28 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used



1 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for  
2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
3 are used for pitting. In combination, the above identified prior art references merely use those  
4 familiar elements for their primary or well known purposes in a manner well within the ordinary  
5 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
7 the art would have been familiar with all the claim elements that the patentee used to distinguish  
8 some of the prior art during prosecution.

9 (110) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
10 4,009,650 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus  
11 employing means for applying a variable gripping force on the fruit during and after the pitting  
12 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
14 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for  
15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
16 are used for pitting. In combination, the above identified prior art references merely use those  
17 familiar elements for their primary or well known purposes in a manner well within the ordinary  
18 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
20 the art would have been familiar with all the claim elements that the patentee used to distinguish  
21 some of the prior art during prosecution.

22 (111) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
23 4,009,650 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus  
24 employing means for applying a variable gripping force on the fruit during and after the pitting  
25 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
27 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for  
28 translating the fruit through the apparatus to the pitting station where pitting plungers of knives

1 are used for pitting. In combination, the above identified prior art references merely use those  
2 familiar elements for their primary or well known purposes in a manner well within the ordinary  
3 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
4 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
5 the art would have been familiar with all the claim elements that the patentee used to distinguish  
6 some of the prior art during prosecution.

7 (112) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
8 4,009,650 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus  
9 employing means for applying a variable gripping force on the fruit during and after the pitting  
10 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
11 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
12 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for  
13 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
14 are used for pitting. In combination, the above identified prior art references merely use those  
15 familiar elements for their primary or well known purposes in a manner well within the ordinary  
16 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
17 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
18 the art would have been familiar with all the claim elements that the patentee used to distinguish  
19 some of the prior art during prosecution.

20 (113) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
21 4,009,650 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus  
22 employing means for applying a variable gripping force on the fruit during and after the pitting  
23 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
24 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
25 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for  
26 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
27 are used for pitting. In combination, the above identified prior art references merely use those  
28 familiar elements for their primary or well known purposes in a manner well within the ordinary

1 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 3 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 4 some of the prior art during prosecution.

5 (114) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
 6 4,009,650 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus  
 7 employing means for applying a variable gripping force on the fruit during and after the pitting  
 8 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
 9 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
 10 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for  
 11 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
 12 are used for pitting. In combination, the above identified prior art references merely use those  
 13 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 14 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 15 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 16 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 17 some of the prior art during prosecution.

18 (115) The '949 patent is obvious in view of the Sunsweet Patent, and Patent  
 19 Nos. 4,009,650 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting  
 20 apparatus employing means for applying a variable gripping force on the fruit during and after  
 21 the pitting operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an  
 22 intermittent pitting apparatus, which a person of ordinary skill in the art would understand is  
 23 adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 3,199,558  
 24 discloses means for translating the fruit through the apparatus to the pitting station where pitting  
 25 plungers of knives are used for pitting. In combination, the above identified prior art references  
 26 merely use those familiar elements for their primary or well known purposes in a manner well  
 27 within the ordinary level of skill in the art. Since there were a finite number of predictable  
 28 solutions, a person of ordinary skill in the art had good reason to pursue the known options.

1 Indeed, a person skilled in the art would have been familiar with all the claim elements that the  
2 patentee used to distinguish some of the prior art during prosecution.

3 (116) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
4 4,009,650 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus  
5 employing means for applying a variable gripping force on the fruit during and after the pitting  
6 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
7 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
8 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for  
9 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
10 are used for pitting. In combination, the above identified prior art references merely use those  
11 familiar elements for their primary or well known purposes in a manner well within the ordinary  
12 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
13 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
14 the art would have been familiar with all the claim elements that the patentee used to distinguish  
15 some of the prior art during prosecution.

16 (117) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
17 4,009,650 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus  
18 employing means for applying a variable gripping force on the fruit during and after the pitting  
19 operation to more efficiently conduct pitting. Pat No.4,009,650discloses an intermittent pitting  
20 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
21 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for  
22 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
23 are used for pitting. In combination, the above identified prior art references merely use those  
24 familiar elements for their primary or well known purposes in a manner well within the ordinary  
25 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
26 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
27 the art would have been familiar with all the claim elements that the patentee used to distinguish  
28 some of the prior art during prosecution.

1 (118) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
2 4,009,650 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus  
3 employing means for applying a variable gripping force on the fruit during and after the pitting  
4 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
5 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
6 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for  
7 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
8 are used for pitting. In combination, the above identified prior art references merely use those  
9 familiar elements for their primary or well known purposes in a manner well within the ordinary  
10 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
11 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
12 the art would have been familiar with all the claim elements that the patentee used to distinguish  
13 some of the prior art during prosecution.

14 (119) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
15 4,009,650 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus  
16 employing means for applying a variable gripping force on the fruit during and after the pitting  
17 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
18 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
19 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for  
20 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
21 are used for pitting. In combination, the above identified prior art references merely use those  
22 familiar elements for their primary or well known purposes in a manner well within the ordinary  
23 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
24 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
25 the art would have been familiar with all the claim elements that the patentee used to distinguish  
26 some of the prior art during prosecution.

27 (120) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
28 4,009,650 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus

1 employing means for applying a variable gripping force on the fruit during and after the pitting  
2 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting  
3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
4 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for  
5 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
6 are used for pitting. In combination, the above identified prior art references merely use those  
7 familiar elements for their primary or well known purposes in a manner well within the ordinary  
8 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
10 the art would have been familiar with all the claim elements that the patentee used to distinguish  
11 some of the prior art during prosecution.

12 (121) The '949 patent is obvious in view of Patent No. 3,556,281 (the "Margaroli  
13 Patent") and Patent No. 664,500, in combination. The Margaroli Patent discloses a pitting  
14 apparatus employing means for applying a variable gripping force on the fruit during the pitting  
15 operation to more efficiently conduct pitting. Pat No.664,500 discloses an intermittent pitting  
16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
17 with a variable gripping force pitting apparatus. In combination, the above identified prior art  
18 references merely use those familiar elements for their primary or well known purposes in a  
19 manner well within the ordinary level of skill in the art. Since there were a finite number of  
20 predictable solutions, a person of ordinary skill in the art had good reason to pursue the known  
21 options. Indeed, a person skilled in the art would have been familiar with all the claim elements  
22 that the patentee used to distinguish some of the prior art during prosecution.

23 (122) The '949 patent is obvious in view of the Margaroli Patent and Patent No.  
24 2,558,205, in combination. The Margaroli Patent discloses a pitting apparatus employing means  
25 for applying a variable gripping force on the fruit during the pitting operation to more efficiently  
26 conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting apparatus, which a person of  
27 ordinary skill in the art would understand is adaptable to be used with a variable gripping force  
28 pitting apparatus. In combination, the above identified prior art references merely use those

1 familiar elements for their primary or well known purposes in a manner well within the ordinary  
2 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
4 the art would have been familiar with all the claim elements that the patentee used to distinguish  
5 some of the prior art during prosecution.

6 (123) The '949 patent is obvious in view of the Margaroli Patent and Patent No.  
7 3,318,349, in combination. The Margaroli Patent discloses a pitting apparatus employing means  
8 for applying a variable gripping force on the fruit during the pitting operation to more efficiently  
9 conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting apparatus, which a person of  
10 ordinary skill in the art would understand is adaptable to be used with a variable gripping force  
11 pitting apparatus. In combination, the above identified prior art references merely use those  
12 familiar elements for their primary or well known purposes in a manner well within the ordinary  
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
15 the art would have been familiar with all the claim elements that the patentee used to distinguish  
16 some of the prior art during prosecution.

17 (124) The '949 patent is obvious in view of the Margaroli Patent and Patent No.  
18 2,360,103, in combination. The Margaroli Patent discloses a pitting apparatus employing means  
19 for applying a variable gripping force on the fruit during the pitting operation to more efficiently  
20 conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting apparatus, which a person of  
21 ordinary skill in the art would understand is adaptable to be used with a variable gripping force  
22 pitting apparatus. In combination, the above identified prior art references merely use those  
23 familiar elements for their primary or well known purposes in a manner well within the ordinary  
24 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
25 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
26 the art would have been familiar with all the claim elements that the patentee used to distinguish  
27 some of the prior art during prosecution.

28 (125) The '949 patent is obvious in view of the Margaroli Patent and Patent No.



1 1,443,624, in combination. The Margaroli Patent discloses a pitting apparatus employing means  
 2 for applying a variable gripping force on the fruit during the pitting operation to more efficiently  
 3 conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting apparatus, which a person of  
 4 ordinary skill in the art would understand is adaptable to be used with a variable gripping force  
 5 pitting apparatus. In combination, the above identified prior art references merely use those  
 6 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 7 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 9 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 10 some of the prior art during prosecution.

11 (126) The '949 patent is obvious in view of the Margaroli Patent and Patent No.  
 12 3,088,582, in combination. The Margaroli Patent discloses a pitting apparatus employing means  
 13 for applying a variable gripping force on the fruit during the pitting operation to more efficiently  
 14 conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting apparatus, which a person of  
 15 ordinary skill in the art would understand is adaptable to be used with a variable gripping force  
 16 pitting apparatus. In combination, the above identified prior art references merely use those  
 17 familiar elements for their primary or well known purposes in a manner well within the ordinary  
 18 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
 19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
 20 the art would have been familiar with all the claim elements that the patentee used to distinguish  
 21 some of the prior art during prosecution.

22 (127) The '949 patent is obvious in view of the Margaroli Patent and Patent No.  
 23 3,291,172, in combination. The Margaroli Patent discloses a pitting apparatus employing means  
 24 for applying a variable gripping force on the fruit during the pitting operation to more efficiently  
 25 conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting apparatus, which a person of  
 26 ordinary skill in the art would understand is adaptable to be used with a variable gripping force  
 27 pitting apparatus. In combination, the above identified prior art references merely use those  
 28 familiar elements for their primary or well known purposes in a manner well within the ordinary



1 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
3 the art would have been familiar with all the claim elements that the patentee used to distinguish  
4 some of the prior art during prosecution.

5 (128) The '949 patent is obvious in view of the Margaroli Patent and Patent  
6 No. 4,009,650, in combination. The Margaroli Patent discloses a pitting apparatus employing  
7 means for applying a variable gripping force on the fruit during the pitting operation to more  
8 efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting apparatus, which a  
9 person of ordinary skill in the art would understand is adaptable to be used with a variable  
10 gripping force pitting apparatus. In combination, the above identified prior art references merely  
11 use those familiar elements for their primary or well known purposes in a manner well within the  
12 ordinary level of skill in the art. Since there were a finite number of predictable solutions, a  
13 person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person  
14 skilled in the art would have been familiar with all the claim elements that the patentee used to  
15 distinguish some of the prior art during prosecution.

16 (129) The '949 patent is obvious in view of the Margaroli Patent and Patent  
17 No. 1,071,333, in combination. The Margaroli Patent discloses a pitting apparatus employing  
18 means for applying a variable gripping force on the fruit during the pitting operation to more  
19 efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting apparatus, which a  
20 person of ordinary skill in the art would understand is adaptable to be used with a variable  
21 gripping force pitting apparatus. In combination, the above identified prior art references merely  
22 use those familiar elements for their primary or well known purposes in a manner well within the  
23 ordinary level of skill in the art. Since there were a finite number of predictable solutions, a  
24 person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person  
25 skilled in the art would have been familiar with all the claim elements that the patentee used to  
26 distinguish some of the prior art during prosecution.

27 (130) The '949 patent is obvious in view of the Margaroli Patent and Patent  
28

1 No. 5,577,439, in combination. The Margaroli Patent discloses a pitting apparatus employing  
2 means for applying a variable gripping force on the fruit during the pitting operation to more  
3 efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting apparatus, which a  
4 person of ordinary skill in the art would understand is adaptable to be used with a variable  
5 gripping force pitting apparatus. In combination, the above identified prior art references merely  
6 use those familiar elements for their primary or well known purposes in a manner well within the  
7 ordinary level of skill in the art. Since there were a finite number of predictable solutions, a  
8 person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person  
9 skilled in the art would have been familiar with all the claim elements that the patentee used to  
10 distinguish some of the prior art during prosecution.

11 (131) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
12 1,071,333 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus  
13 employing means for applying a variable gripping force on the fruit during and after the pitting  
14 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
16 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for  
17 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
18 are used for pitting. In combination, the above identified prior art references merely use those  
19 familiar elements for their primary or well known purposes in a manner well within the ordinary  
20 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
22 the art would have been familiar with all the claim elements that the patentee used to distinguish  
23 some of the prior art during prosecution.

24 (132) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
25 1,071,333 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus  
26 employing means for applying a variable gripping force on the fruit during and after the pitting  
27 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
28

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
2 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for  
3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
4 are used for pitting. In combination, the above identified prior art references merely use those  
5 familiar elements for their primary or well known purposes in a manner well within the ordinary  
6 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
8 the art would have been familiar with all the claim elements that the patentee used to distinguish  
9 some of the prior art during prosecution.

10 (133) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
11 1,071,333 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus  
12 employing means for applying a variable gripping force on the fruit during and after the pitting  
13 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
15 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for  
16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
17 are used for pitting. In combination, the above identified prior art references merely use those  
18 familiar elements for their primary or well known purposes in a manner well within the ordinary  
19 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
21 the art would have been familiar with all the claim elements that the patentee used to distinguish  
22 some of the prior art during prosecution.

23 (134) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
24 1,071,333 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus  
25 employing means for applying a variable gripping force on the fruit during and after the pitting  
26 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
28

1 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for  
2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
3 are used for pitting. In combination, the above identified prior art references merely use those  
4 familiar elements for their primary or well known purposes in a manner well within the ordinary  
5 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
7 the art would have been familiar with all the claim elements that the patentee used to distinguish  
8 some of the prior art during prosecution.

9 (135) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
10 1,071,333 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus  
11 employing means for applying a variable gripping force on the fruit during and after the pitting  
12 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
14 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for  
15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
16 are used for pitting. In combination, the above identified prior art references merely use those  
17 familiar elements for their primary or well known purposes in a manner well within the ordinary  
18 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
20 the art would have been familiar with all the claim elements that the patentee used to distinguish  
21 some of the prior art during prosecution.

22 (136) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
23 1,071,333 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus  
24 employing means for applying a variable gripping force on the fruit during and after the pitting  
25 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
27 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for  
28

1 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
2 are used for pitting. In combination, the above identified prior art references merely use those  
3 familiar elements for their primary or well known purposes in a manner well within the ordinary  
4 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
5 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
6 the art would have been familiar with all the claim elements that the patentee used to distinguish  
7 some of the prior art during prosecution.

8 (137) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
9 1,071,333 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus  
10 employing means for applying a variable gripping force on the fruit during and after the pitting  
11 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
12 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
13 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for  
14 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
15 are used for pitting. In combination, the above identified prior art references merely use those  
16 familiar elements for their primary or well known purposes in a manner well within the ordinary  
17 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
18 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
19 the art would have been familiar with all the claim elements that the patentee used to distinguish  
20 some of the prior art during prosecution.

21 (138) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
22 1,071,333 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus  
23 employing means for applying a variable gripping force on the fruit during and after the pitting  
24 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
25 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
26 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for  
27 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
28

1 are used for pitting. In combination, the above identified prior art references merely use those  
2 familiar elements for their primary or well known purposes in a manner well within the ordinary  
3 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
4 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
5 the art would have been familiar with all the claim elements that the patentee used to distinguish  
6 some of the prior art during prosecution.

7 (139) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
8 1,071,333 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus  
9 employing means for applying a variable gripping force on the fruit during and after the pitting  
10 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
11 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
12 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for  
13 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
14 are used for pitting. In combination, the above identified prior art references merely use those  
15 familiar elements for their primary or well known purposes in a manner well within the ordinary  
16 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
17 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
18 the art would have been familiar with all the claim elements that the patentee used to distinguish  
19 some of the prior art during prosecution.

20 (140) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
21 1,071,333 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus  
22 employing means for applying a variable gripping force on the fruit during and after the pitting  
23 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
24 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
25 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for  
26 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
27 are used for pitting. In combination, the above identified prior art references merely use those  
28

1 familiar elements for their primary or well known purposes in a manner well within the ordinary  
2 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
4 the art would have been familiar with all the claim elements that the patentee used to distinguish  
5 some of the prior art during prosecution.

6 (141) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
7 1,071,333 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus  
8 employing means for applying a variable gripping force on the fruit during and after the pitting  
9 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
10 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
11 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for  
12 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
13 are used for pitting. In combination, the above identified prior art references merely use those  
14 familiar elements for their primary or well known purposes in a manner well within the ordinary  
15 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
16 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
17 the art would have been familiar with all the claim elements that the patentee used to distinguish  
18 some of the prior art during prosecution.

19 (142) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
20 1,071,333 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus  
21 employing means for applying a variable gripping force on the fruit during and after the pitting  
22 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
24 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for  
25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
26 are used for pitting. In combination, the above identified prior art references merely use those  
27 familiar elements for their primary or well known purposes in a manner well within the ordinary  
28



1 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
3 the art would have been familiar with all the claim elements that the patentee used to distinguish  
4 some of the prior art during prosecution.

5 (143) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
6 1,071,333 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus  
7 employing means for applying a variable gripping force on the fruit during and after the pitting  
8 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
9 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
10 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for  
11 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
12 are used for pitting. In combination, the above identified prior art references merely use those  
13 familiar elements for their primary or well known purposes in a manner well within the ordinary  
14 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
15 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
16 the art would have been familiar with all the claim elements that the patentee used to distinguish  
17 some of the prior art during prosecution.

18 (144) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
19 1,071,333 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus  
20 employing means for applying a variable gripping force on the fruit during and after the pitting  
21 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting  
22 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
23 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for  
24 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
25 are used for pitting. In combination, the above identified prior art references merely use those  
26 familiar elements for their primary or well known purposes in a manner well within the ordinary  
27 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
28



1 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
2 the art would have been familiar with all the claim elements that the patentee used to distinguish  
3 some of the prior art during prosecution.

4 (145) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
5 5,577,439 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus  
6 employing means for applying a variable gripping force on the fruit during and after the pitting  
7 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
9 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for  
10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
11 are used for pitting. In combination, the above identified prior art references merely use those  
12 familiar elements for their primary or well known purposes in a manner well within the ordinary  
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
15 the art would have been familiar with all the claim elements that the patentee used to distinguish  
16 some of the prior art during prosecution.

17 (146) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
18 5,577,439 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus  
19 employing means for applying a variable gripping force on the fruit during and after the pitting  
20 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
22 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for  
23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
24 are used for pitting. In combination, the above identified prior art references merely use those  
25 familiar elements for their primary or well known purposes in a manner well within the ordinary  
26 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
28

1 the art would have been familiar with all the claim elements that the patentee used to distinguish  
2 some of the prior art during prosecution.

3 (147) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
4 5,577,439 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus  
5 employing means for applying a variable gripping force on the fruit during and after the pitting  
6 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
7 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
8 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for  
9 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
10 are used for pitting. In combination, the above identified prior art references merely use those  
11 familiar elements for their primary or well known purposes in a manner well within the ordinary  
12 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
13 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
14 the art would have been familiar with all the claim elements that the patentee used to distinguish  
15 some of the prior art during prosecution.

16 (148) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
17 5,577,439 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus  
18 employing means for applying a variable gripping force on the fruit during and after the pitting  
19 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
20 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
21 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for  
22 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
23 are used for pitting. In combination, the above identified prior art references merely use those  
24 familiar elements for their primary or well known purposes in a manner well within the ordinary  
25 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
26 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
27 the art would have been familiar with all the claim elements that the patentee used to distinguish  
28 some of the prior art during prosecution.

~~1230194.1~~1230194.4

1 (149) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
2 5,577,439 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus  
3 employing means for applying a variable gripping force on the fruit during and after the pitting  
4 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
5 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
6 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for  
7 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
8 are used for pitting. In combination, the above identified prior art references merely use those  
9 familiar elements for their primary or well known purposes in a manner well within the ordinary  
10 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
11 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
12 the art would have been familiar with all the claim elements that the patentee used to distinguish  
13 some of the prior art during prosecution.

14 (150) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
15 5,577,439 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus  
16 employing means for applying a variable gripping force on the fruit during and after the pitting  
17 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
18 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
19 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for  
20 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
21 are used for pitting. In combination, the above identified prior art references merely use those  
22 familiar elements for their primary or well known purposes in a manner well within the ordinary  
23 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
24 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
25 the art would have been familiar with all the claim elements that the patentee used to distinguish  
26 some of the prior art during prosecution.

27 (151) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
28

1 5,577,439 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus  
2 employing means for applying a variable gripping force on the fruit during and after the pitting  
3 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
5 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for  
6 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
7 are used for pitting. In combination, the above identified prior art references merely use those  
8 familiar elements for their primary or well known purposes in a manner well within the ordinary  
9 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
11 the art would have been familiar with all the claim elements that the patentee used to distinguish  
12 some of the prior art during prosecution.

13 (152) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
14 5,577,439 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus  
15 employing means for applying a variable gripping force on the fruit during and after the pitting  
16 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
18 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for  
19 translating the fruit through the apparatus to the pitting station where pitting plungers or knives  
20 are used for pitting. In combination, the above identified prior art references merely use those  
21 familiar elements for their primary or well known purposes in a manner well within the ordinary  
22 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
24 the art would have been familiar with all the claim elements that the patentee used to distinguish  
25 some of the prior art during prosecution.

26 (153) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
27 5,577,439 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus  
28

1 employing means for applying a variable gripping force on the fruit during and after the pitting  
2 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
4 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for  
5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
6 are used for pitting. In combination, the above identified prior art references merely use those  
7 familiar elements for their primary or well known purposes in a manner well within the ordinary  
8 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
10 the art would have been familiar with all the claim elements that the patentee used to distinguish  
11 some of the prior art during prosecution.

12 (154) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
13 5,577,439 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus  
14 employing means for applying a variable gripping force on the fruit during and after the pitting  
15 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
17 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for  
18 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
19 are used for pitting. In combination, the above identified prior art references merely use those  
20 familiar elements for their primary or well known purposes in a manner well within the ordinary  
21 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
22 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
23 the art would have been familiar with all the claim elements that the patentee used to distinguish  
24 some of the prior art during prosecution.

25 (155) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
26 5,577,439 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus  
27 employing means for applying a variable gripping force on the fruit during and after the pitting  
28

operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(156) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 5,577,439 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(157) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 5,577,439 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
2 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for  
3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
4 are used for pitting. In combination, the above identified prior art references merely use those  
5 familiar elements for their primary or well known purposes in a manner well within the ordinary  
6 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
8 the art would have been familiar with all the claim elements that the patentee used to distinguish  
9 some of the prior art during prosecution.

10 (158) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
11 5,577,439 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus  
12 employing means for applying a variable gripping force on the fruit during and after the pitting  
13 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
15 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for  
16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives  
17 are used for pitting. In combination, the above identified prior art references merely use those  
18 familiar elements for their primary or well known purposes in a manner well within the ordinary  
19 level of skill in the art. Since there were a finite number of predictable solutions, a person of  
20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in  
21 the art would have been familiar with all the claim elements that the patentee used to distinguish  
22 some of the prior art during prosecution.

23 (159) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.  
24 5,577,439 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus  
25 employing means for applying a variable gripping force on the fruit during and after the pitting  
26 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting  
27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used  
28



with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

**C. Patent L.R. 3-3(c): Identification of Claim Limitations in Prior Art**

Pursuant to Patent L.R. 3-3(c), Defendants provide the charts attached collectively hereto as **Exhibit A** identifying where specifically in each item of prior art each limitation of each asserted claim is found, etc. The attached **Exhibit A** charts are incorporated by reference as though fully set forth herein. Defendants will update the charts identify the Court's construction of the term "active assembly" by identifying corresponding structure and function in the prior art within 30 days of the Court's grant of leave to amend its Invalidity Contentions. Additionally, Defendants reserve the right to identify additional prior art containing corresponding structure and function with regard to the Court's construction of "active assembly" within the same time period.

**D. Patent L.R. 3-3(d): Other Grounds of Invalidity, etc.**

Pursuant to Patent L.R. 3-3(d), Defendants contend that the Asserted Claims of the '949 patent are invalid under 35 U.S.C. § 112 because: (1) the claims are indefinite; (2) the claims are not enabled; (3) and the claims lack adequate written description. Defendants also contend that the claims as construed are unpatentable under §101. The Defendants' contentions that the following claims are invalid under 35 U.S.C. §101 and 112 are made in the alternative, and do not constitute, and should not be interpreted as, admissions regarding the construction or scope of the claims of the '949 patent, or that any of the claims of the '949 patent are not anticipated or rendered obvious by any prior art.

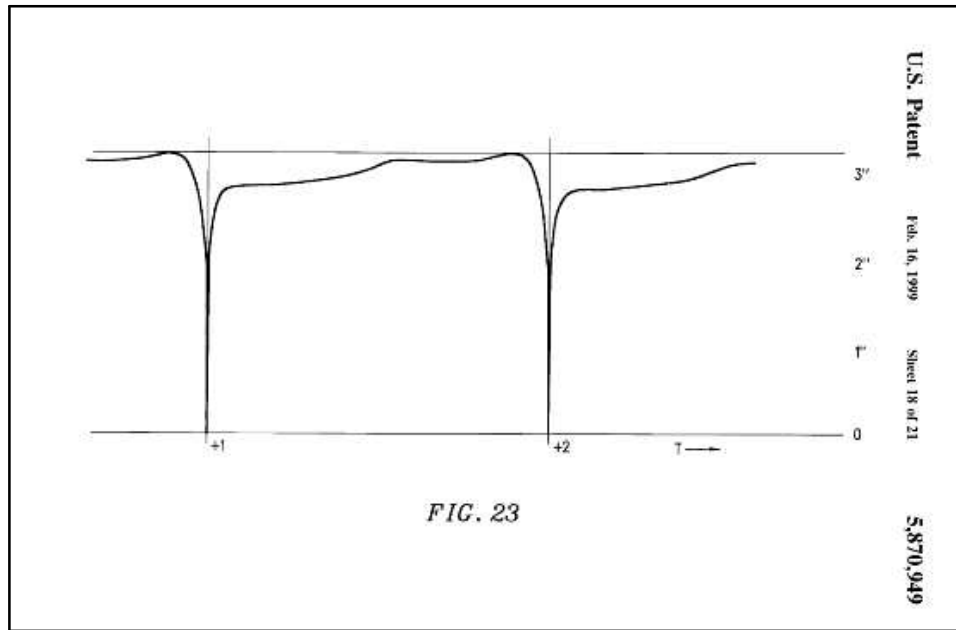
1           **1.       35 U.S.C. § 112, PARAGRAPH 2 – INDEFINITENESS**

2           Under 35 U.S.C. § 112 ¶ 2, “[t]he specification shall conclude with one or more claims  
3 particularly pointing out and distinctly claiming the subject matter which the applicant regards as  
4 his invention.” 35 U.S.C. § 112 ¶ 2. If a claim fails to satisfy the definiteness requirement, it is  
5 invalid. *Bancorp Servs., L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1371 (Fed. Cir. 2004).  
6 “In ruling on a claim of patent indefiniteness, a court must determine whether those skilled in the  
7 art would understand what is claimed when the claim is read in light of the specification.” *Id.*;  
8 *Exxon Research and Eng’g Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001). “A claim  
9 is indefinite if its legal scope is not clear enough that a person of ordinary skill in the art could  
10 determine whether a particular composition infringes or not.” *Geneva Pharm., Inc. v.*  
11 *GlaxoSmithKline PLC*, 349 F.3d 1373, 1384 (Fed. Cir. 2003); *accord Exxon Research*, 265 F.3d  
12 at 1375.

13                       **a.       Claim Terms “pitting operation” and “after the pitting operation”**

14           Here, each of the Asserted Claims of the ‘949 Patent (Claims 5 and 12), include the claim  
15 terms “pitting operation” and “after the pitting operation.” Each of the Asserted Claims also  
16 contain temporal (time based) limitations which state that certain structures or “holders” move  
17 from a closed configuration to an open configuration “*after* the pitting operation” (see Claim 5,  
18 last element), or that said “holders” vary the gripping force on the fruit “*during and after* the  
19 pitting operation.” (see Claim 12, last element). Accordingly, for those skilled in the art to  
20 understand the asserted claims, and to understand whether an accused apparatus infringes, a clear  
21 and distinct understanding of the “pitting operation” and most importantly appraisal of the instant  
22 in time when the “pitting operations” ends (i.e., so as to have an understanding of what “after the  
23 pitting operation” means) is absolutely required.

24           Here, the Figures for the ‘949 patent and discussion of the Figures in the specification  
25 discuss the temporal aspects of the pitting operation. Figure 23 provides the following:



The specification then states the following with respect to Figure 23:

FIG. 23 is a graph representing the vertical position of the tip of one of the pitting knives 102 of the FIG. 17 assembly, as a function of time. FIG. 23 shows that the vertical position of the knife tip is cyclical, **with pitting occurring at times t1 and t2.** As is apparent from inspection of FIG. 23, the knife tip moves (vertically) very rapidly downward toward its **lowest position (at each of pitting times t1 and t2),** and very rapidly upward from its lowest position. (emphasis added)

In addition, in its discussion of a conventional pitting apparatus (which necessarily includes a pitting operation), the specification of the '949 patent states, "there is substantial friction between the pitting knife, fruit holder, and the fruit flesh both during the downward (pitting) stroke of each knife and the upward (retracting) knife stroke which follows the pitting stroke." (col. 9, lines 1 – 4) (emphasis added). Elsewhere, the specification states, "After the pitting operation, as knives 102 move upward and to the right (when viewed as in Fig. 6) relative to fixedly mounted grill 34, the grill strips the pitted fruit from the knives." (col. 5, lines 65-67). Elsewhere, the specification states, "Just after the knives 102 have pitted the fruit articles in a pair of adjacent holders 36 and at an instant when the knives 102 begin to move upward (away from the pitting rubbers 70) . . . ." (col. 6, lines 54 – 59). Still, in other portions of the specification, Figures 5 and 10(a) show that the knives in both the prior art and the claimed

invention travel well past the surface of the fruit at the end of the downward stroke, and protrude out beyond the plane formed by the bottom of the rubber fruit cup/holder. The specification describes Figure 5 as follows:

Next, with reference to FIGS. 5, 6, and 9, *we describe the pitting operation in more detail* (in an implementation in which motor 24 continuously translates holders 36 around the loop defined by sprocket assemblies 32 and 34). FIG. 5 shows a holder 36 and one row of four knives 102 in their lowest position (extending all the way through pitting rubbers 70 of the four pockets defined by the holder), in the position the knives would occupy immediately after pushing pits downward (through rubbers 70) from within four articles of fruit seated in the pockets. (emphasis added).

Although certainly no model of clarity, as Defendants read and interpret Plaintiff's Infringement Contentions, Plaintiff appears to contend (notwithstanding the above quoted language and Figures from the '949 patent specification) that the "pitting operation," as that term is recited in the Asserted Claims 5 and 12, ends some unspecified time before the knives reach their lowest position, and before they push the pits downward through the rubbers. (See Plaintiff's Infringement Contentions). Thus, Plaintiff appears to contend that the knives are still moving downward some unspecified period of time "after the pitting operation."

To Court's construction of the term pitting operation and the related temporal limitations result in invalidity because they result in claim terms that are indefinite because they do not provide clear and distinct disclosure as to when the pitting operation ends.

~~As set forth above, the Court has not yet issued a claim construction ruling. However, assuming only for the sake of argument, and not by way of admission, that the Court construes the claims such that the~~ To the extent that the Court's construction of the term "pitting operation" is to be interpreted to mean that the pitting operation ends sometime while the knives are still traveling in a downward direction, during their downstroke, such that the pitting operation ends before the knives reach their "lowest position," then the claim term "pitting operation" and the term "after the pitting operation" are indefinite and fail to comply with 35 U.S.C. § 112 ¶ 2, because the legal scope of Claims 5 and 12 of the '949 patent is entirely unclear and cannot be determined.

**b. Claim Term “active assembly” is Indefinite**

The claim term “active assembly” is used in both of the asserted claims 5 and 12. This term has no antecedent basis in the disclosure—it does not appear anywhere in the patent specification. Given the vagueness of the term “active assembly” which has no particular defined or understood meaning to those skilled in the art, it is indefinite and its use in both Claims 5 and 12 renders these claims indefinite. Moreover, to the extent that the term “active assembly” is intended to include a combination of structural elements, such elements are undefined. Additionally, in light of the Court’s construction of “pitting” related terms, those terms are indefinite and fail to comply with 35 U.S.C. § 112 ¶ 2, because the legal scope of ‘949 patent’s specification does not recite any type of sensor or sensing means within the fruit pitting apparatus to signal when the pitting operation has ended, especially because claims 5 and 12 of the ‘949 patent are entirely unclear and cannot be determined are apparatus claims that should be defining what the claimed apparatus is.

**eb. Mixed Claim Indefiniteness Active Assembly**

In light of the Court’s construction of the term “active assembly,” that term is indefinite and fails to comply with 35. U.S.C. § 112 ¶2, because the ‘949 patent’s specification provides insufficient detail regarding the corresponding structure regarding control signals which can be generated “in any of a number of well known ways by a conventional timing system.” See *Biomedino, LLC v. Waters Technologies Corp.*, 490 F.3d 946 (Fed. Cir. 2007); *Ergo Licensing, LLC v. CareFusion 303, Inc.*, 673 F.3d 1361 (Fed. Cir. 2012); 35 U.S.C. § 112(6); *AllVoice Computing PLC v. Nuance Commc’ns., Inc.* 504 F.3d 1226 (Fed. Cir. 2007). Further, to the extent that the Plaintiff contends that the corresponding structure of the active assembly includes structure found in the accused infringing device, then the construction of the active assembly is indefinite.

In addition, claims 5 and 12 of the ‘949 Patent are invalid for indefiniteness under 35 U.S.C. § 101, and 112 ¶ 2, because they recite both an apparatus and a method of using that apparatus in view of the indefinite temporal limitations wherein the claims describe certain

functions working in sequence with other functions, as would be the case with claims to a method or process. Such mixed claims are invalid under 35 U.S.C. § 101, and 112 ¶ 2. *IPXL Holdings v. Amazon.com, Inc.*, 430 F.3d 1377, 1384–85 (Fed. Cir. 2005); *see also Amgen, Inc. v. Chugai Pharm. Co.*, 927 F.2d 1200, 1217 (Fed. Cir. 1991) (A claim is considered indefinite if it does not reasonably apprise those skilled in the art of its scope). “The Board of Patent Appeals and Interferences (‘Board’) of the PTO . . . has made it clear that reciting both an apparatus and a method of using that apparatus renders a claim indefinite under section 112, paragraph 2. *Ex parte Lyell*, 17 USPQ 2d 1548 (1990). . . . This rule is well recognized and has been incorporated into the PTO’s Manual of Patent Examination Procedure. § 2173.05(p)(II)(1999) (‘A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph.’); *see also* Robert C. Faber, *Landis on Mechanics of Patent Claim Drafting* § 60A (2001) (‘Never mix claim types to different classes of invention in a single claim.’).

By way of example and not by way of limitation, assuming ~~arguendo~~ the claims were otherwise valid (they are not), it is unclear whether Plaintiff contends infringement of claim 12, for example, occurs when one makes, sells, offers to sell, or imports an apparatus that among other things, is capable of varying the gripping force after the pitting operation, or whether infringement only occurs when one actually uses the apparatus so as to, among other things, “vary the gripping force exerted by the pockets on specimens of fruit held in said holders during and after the pitting operation.” Because claims 5 and 12 recite both an apparatus and sequential steps in a process as with typical method claims, they do not apprise a person of ordinary skill in the art of their scope, and are invalid.

## 2. 35 U.S.C. § 112, PARAGRAPH 1—WRITTEN DESCRIPTION

As set forth above, the Court has not yet issued a claim construction ruling. However, assuming only for the sake of argument, and not by way of admission, that the Court construes the claims such To the extent the Plaintiff contends that the Court’s construction of the term pitting operation and the related temporal limitation including during the pitting operation and

1 after the pitting operation mean that the “pitting operation” ends sometime while the knives are  
 2 still traveling in a downward direction, during their downstroke, such that the pitting operation  
 3 ends before the knives reach their “lowest position,” the Asserted Claims 5 and 12 of the ‘949  
 4 Patent are invalid for failure to comply with the written description requirement under 35 U.S.C.  
 5 § 112 ¶ 1.

6 Defendants’ grounds for this contention include, without limitation, that the specification  
 7 of the ‘949 Patent does not contain any description of any embodiment wherein the “pitting  
 8 operation” ends sometime while the knives are still traveling in a downward direction, during  
 9 their downstroke, such that the pitting operation ends before the knives reach their “lowest  
 10 position”~~or even before the knives push the pit through the rubber.~~ As a result, Plaintiff did not  
 11 have, and did not disclose or possess, at the time the application for the ‘949 patent was filed, an  
 12 invention wherein the “pitting operation” is completed before the knife reaches its lowest  
 13 position.

14 ~~In addition, the specification does not contain an adequate, or any, written description of~~  
 15 ~~the “active assembly” limitation recited in each of the Asserted Claims 5 and 12. That term does~~  
 16 ~~not appear anywhere in the specification.~~

17 In light of the Court’s construction of “pitting” related terms, ‘949 patent fails to comply  
 18 with the written description requirement because the ‘949 patent’s specification does not recite or  
 19 disclose any type of sensor or sensing means within the fruit pitting apparatus to signal the  
 20 condition of the fruit and when the pitting operation has ended. Thus, the construction of the  
 21 temporal limitations of the pitting operation as correlative to the condition of the fruit violates the  
 22 written description because the patent specification does not contain such a disclosure, or that the  
 23 Plaintiff was ever in possession of such an apparatus in which the pockets of the holders are  
 24 closed and opened depending upon the condition of the fruit therein.

### 25 3. 35 U.S.C. § 112, PARAGRAPH 1—ENABLEMENT

26 The ‘949 Patent does not disclose any step, method, device, or feature for generating or  
 27 supplying unspecified “control signals” used in some unspecified way to actuate ~~pneumatically~~  
 28



1 ~~driven~~mechanical linear actuators. To the extent that Plaintiff contends that the use of controlled  
 2 actuators to cause the fruit holders to open and close at certain times relative to the “pitting  
 3 operation” would ~~not~~ have been obvious to a person having ordinary skill in the art, then the  
 4 patent fails the enablement requirement, because it fails to disclose the means, apparatus, or  
 5 structure necessary to practice that the patented invention. Instead, the specification merely states  
 6 that the control signals “can be generated in any number of well known ways.” Accordingly, the  
 7 patent is either obvious in that it employs admittedly “well known” and obvious techniques to  
 8 vary the gripping force of the holders; or assuming only for the sake of argument that the Court  
 9 rules that Claims 5 and 12 are not obvious to one having ordinary skill in the art, then claims 5  
 10 and 12, and the specification fail the enablement requirement under 35 U.S.C. § 112, first  
 11 paragraph.

12 As set forth above, ~~the Court has not yet issued a~~in light of the Court’s recent claim  
 13 construction ~~ruling. However, assuming only for the sake of argument, and not by way of~~  
 14 ~~admission, that the Court construes the claims such that the “pitting operation” ends sometime~~  
 15 ~~before the knife fully ejects the pit from the rubber holder, the~~. Asserted Claims 5 and 12 of the  
 16 ‘949 Patent are not enabled because they fail to recite an essential step or feature of the  
 17 apparatus/method namely a type of sensor or sensing means within the fruit pitting apparatus to  
 18 signal when the pitting operation has ended. A claim which omits matter disclosed to be  
 19 essential to the invention as described in the specification or in other statements of record  
 20 violates 35 U.S.C. 112, first paragraph, as not enabling. *In re Mayhew*, 527 F.2d 1229, 188  
 21 USPQ 356 (CCPA 1976). Here, ejecting the pit from the rubber is an essential step of the  
 22 claimed invention. The claims also omit the structure or steps necessary to provide control  
 23 signals to the “active assembly.” According to the specification, these signals are essential the  
 24 invention as described, and this also fails the enablement requirement. *Id.*

#### 25 4. 35 U.S.C. § 101 UTILITY

26 A claim is inoperable, and therefore fails the utility requirement and enablement  
 27 requirement, when it contains a limitation that is impossible to meet. *Process Control Corp. v.*  
 28

1 *HydReclaim Corp.*, 190 F.3d 1350, 1359 (Fed. Cir. 1999).

2 ~~As set forth above, the Court has not yet issued a~~ In light of the Court's recent claim  
 3 construction ~~ruling. However, assuming only for the sake of argument, and not by way of~~  
 4 ~~admission, that the Court construes the claims such that the "pitting operation" ends sometime~~  
 5 ~~before the knife fully ejects the pit from the rubber holder~~, the Asserted Claims 5 and 12 of the  
 6 '949 Patent are inoperable because ~~such~~ the patent and the claim as construed apparently discloses  
 7 a pitting operation ~~would yield a result~~ in which the pit of the subject ~~prune or other~~ fruit does  
 8 not leave the holder, and thus the holder, driven on a looped conveyor assembly, would not be  
 9 capable of receiving another piece of fruit, thus defeating the entire purpose of the automated  
 10 pitting apparatus, and rendering it inoperable and not in compliance with 35 U.S.C. § 101.

## 11 **H. DOCUMENT PRODUCTION (PATENT L.R. 3-4)**

### 12 **A. Patent L.R. 3-4(a): Documentation re Operation of Accused Instrumentality**

13 Pursuant to Patent L.R. 3-4(a), Defendants identify and produce concurrently herewith  
 14 documents labeled DEF 01071-01098. Defendants also identify Fadei Automatic Prune Pitter M-  
 15 292 User's Guide previously produced as DEF 00015-00039, reproduced concurrently herewith  
 16 under separate cover with a "CONFIDENTIAL" designation.

### 17 **B. Patent L.R. 3-4(b): Documents re Prior Art**

18 Pursuant to Patent L.R. 3-4(b), Defendants identify and produce concurrently herewith  
 19 documents labeled DEF00484-01070. Defendants also identify previously produced document  
 20 Herbert Cherry and Plum Pitter Model 27A Operating Instructions and Spare Part List (DEF  
 21 00040-00057).

1 DATED: ~~July~~June 28, ~~2011~~2012

DOWNEY BRAND LLP

2  
3 By: \_\_\_\_\_

4 MICHAEL J. THOMAS  
5 Attorneys for Defendant/Counterclaimant  
6 FADEI USA, INC., PAN AMERICAN  
ENGINEERING and EQUIPMENT CO., INC.,  
7 MANUEL SILVA, and MARIANI  
8 PACKING CO., INC.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<b>Summary Report:</b> <b>Litéra® Change-Pro ML 6.5.0.396 Document Comparison done on</b> <b>6/28/2012 1:39:20 PM</b>	
<b>Style Name:</b> Default Style	
<b>Original Filename:</b>	
<b>Original DMS:</b> do://WEST/1230194/1	
<b>Modified Filename:</b>	
<b>Modified DMS:</b> do://WEST/1230194/4	
<b>Changes:</b>	
Add	61
Delete	65
Move From	12
Move To	12
Table Insert	7
Table Delete	4
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
<b>Total Changes:</b>	161